588.

SUPREME COURT OF THE UNITED STATES.

No. 98.

BENJAMIN BADEN, AN ALIEN, LESSEE OF GEORGE ZELLER & AL., ALIENS, PLAINTIFF IN ERROR,

vs.

JACOB K. ECKERT AND AL.

IN ERROR TO THE CIRCUIT COURT U. S. FOR EAST PENNSYLVANIA.

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J. & G. S. GIDEON, printers.

United States, eastern district of Pennsylvania, sct.

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, greeting:

Because that, in the record and process, and also in the rendering of judgment in a suit before you, between Benjamin Baden, an alien, [L. S.] lessee of George Zeller and Anna Maria, his wife, John Zick, Barbara Zick, Catharine Barbara Brumbacker, John Jacob Brumbacker, Anna Catharine Brumbacker, John Jacob Zanger, John Jacob Argast, Simon White, Matthew White, Catharine Barbara White, John Jacob Rarber, John Ernest, John Martin Gudeman and Barbara, his wife, late Kretta, in her right, all aliens, plaintiffs; and Jacob K. Eckert, Jacob Eshelman, Jacob Eckert, Susannah Eckert, Henry Eckert, John Hegans, Peter Garrah, William Hegans, Eve Herr, widow of Tobias Herr, dec., Jacob B. Burrows, John Eshelman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Matthew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hess, Jacob France, David Elder, Joseph Kincade, executor of Jacob Kincade, Henry Kniser, John Stacy, John Stacy, 2d, and Isaac Girvin, citizens of the State of Pennsylvania, defendants, in a plea of trespass and ejectment, a manifest error has intervened to the great damage of the said plaintiff, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should *be* be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf:

You are hereby commanded, that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the second Monday in January next, at the city of Washington, being the seat of National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States at Philadelphia, this twenty-seventh day of November, A. D. one thousand eight hundred and forty-three, and in the sixty-eighth year of the independence of the said United States.

FRA. HOPKINSON, *Clerk Circuit Court.*

Allowed— ARCH. RANDALL.

United States, eastern district of Pennsylvania, sct.

To Jacob K. Eckert, Jacob Eshleman, Jacob Eckert, Susannah Eckert, Henry Eckert, John Hegans, Peter Garrah, Williams Hegans, Eve Herr, widow of Tobias Herr, dec., Jacob B. Burrows, John

Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Matthew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hess, Jacob France, David Elder, Joseph Kincade, executor of John Kincade, Henry Kniser, John Stacy, John Stacy, 2d, and Isaac Girvin.

Whereas, by a writ of error issuing out of the Supreme Court of the United States, directed to the judges of the circuit court of the United States, holden in and for the eastern district of Pennsylvania, in the third circuit, wherein Benjamin Baden, an alien, lessee of George Zeller and Anna Maria his wife, John Zick, Barbara Zick, Catharine Barbara Brumbacker, John Jacob Brumbacker, Anna Catharine Brumbacker, John Jacob Zanger, John Jacob Argast, Simon White, Matthew White, Catharine Barbara White, John Jacob Barber, John Ernest, J. Martin Gudeman, and Barbara his wife, late Kretta, in her right, all aliens, is the plaintiff; the said judges are directed to send the record and process of a certain suit, with all things concerning them, so that the same may be had before the chief justice and the associate justices of the Supreme Court of the United States, on the 2d Monday of January next, at the city of Washington, being the seat of National Government, in which suit the said Benjamin Baden, lessee as aforesaid is the original plaintiff, and you, the said Jacob K. Eckert, Jacob Eshleman, Jacob Eckert, Susannah Eckert, Henry Eckert, John Hegans, Peter Garrah, William Hegans, Eve Herr, widow of Tobias Herr, dec., Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Matthew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hess, Jacob France, David Elder, Joseph Kincade, executor of John Kincade, Henry Kniser, John Stacy, John Stacy, 2d, and Isaac Girvin are defendants, in a plea of trespass and ejectment, that the record and process aforesaid being inspected, they, the said Supreme Court, may cause to be done thereupon what of right ought to be done; and the said Benjamin Baden, lessee as aforesaid, having made an assignment of errors and given good and sufficient security that the plaintiff in error shall well and truly prosecute his said writ of error to effect, and answer all such costs as upon an affirmance of the judgment of the said circuit court may be adjudged to the defendant in error. You are hereby cited to appear (if you see cause) at the said Supreme Court, at the time and place aforesaid, to answer to the said writ of error, and the errors assigned by the said

Given under my hand and seal this twenty-seventh day of November, one thousand eight hundred and forty-three.

ARCH'D RANDALL.

Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donelly,

Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, John Stacy, 2d, and Isaac Girvin, late of the eastern district of Pennsylvania, yeomen, citizens of the State of Pennsylvania, were attached to answer Benjamin Baden, an alien subject of the German Empire, of a plea, wherefore with force and arms, &c., they entered into twenty messuages, barns, stables, outhouses, gardens, orchards, five hundred acres of wood land, arable, pasture, meadow, and other land, together with the mills and other buildings thereon; also, a lot of five acres in the village of Strasburgh, with the appurtenances, altogether of the value of fifty thousand dollars, lawful money of the United States, situate in the county of Lancaster, in the said district and State of Pennsylvania, which George Zeller, an alien, subject of the German Empire, and Anne Maria, his wife, also an alien, subject of that empire, in her right, whose name was White, before her marriage with her said husband, had demised to the said Benjamin, for a term which is not yet expired.

And also, wherefore, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, Williams Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, John Stacy, 2d, and Isaac Girvin, with force and arms, &c., entered into twenty other messuages, barns, stables, outhouses, gardens, orchards, five hundred acres of wood land, arable, pasture, meadow, and other land, together with the mills and other buildings thereon; also, a certain other lot of five acres in the village of Strasburgh, with the appurtenances, altogether of the value of other fifty thousand dollars of like lawful money, situate in the said county, district, and State aforementioned, which John Zick, an alien, subject of the German Empire, had demised to the said Benjamin, for a term which is not yet expired.

And also, wherefore, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, with force and arms, &c., entered into twenty other messuages, barns, stables, out houses, gardens, orchards, five hundred acres of wood land, arable, pasture, meadow, and other land, together with the mills and other buildings thereon; also, a certain other lot of five acres in the village of Strasburgh, with the appurtenances, altogether of the value of other fifty thousand dollars, of like lawful money, situate in the said county, district, and State aforementioned, which Barbara Zick, an alien, subject of the Ger-

man Empire, had demised to the said Benjamin, for a term which is not yet expired.

And also, wherefore, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2nd, and Isaac Girvin, with force and arms, &c., entered into twenty other messuages, barns, stables, outhouses, gardens, orchards, five hundred acres of wood land, arable, pasture, meadow, and other land, together with the mills, and other buildings thereon; also, a certain other lot of five acres in the village of Strasburgh, with the appurtenances, altogether of the value of other fifty thousand dollars of like lawful money, situate in the county, district, and State aforementioned, which Catharine Barbara Brumbacker, an alien, subject of the German Empire, had demised to the said Benjamin, for a term which is not expired.

And also, wherefore, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, with force and arms, &c., entered into twenty other messuages, barns, stables, out houses, gardens, orchards, five hundred acres of wood land, arable, pasture, meadow, and other land, together with the mills, and other buildings thereon; also, a certain other lot of five acres in the village of Strasburgh, with the appurtenances, altogether of the value of other fifty thousand dollars of like lawful money, situate in the said county, district, and State aforementioned, which John Jacob Brumbacker, an alien, subject of the German Empire, had demised to the said Benjamin, for a term which is not yet expired.

And also, wherefore, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, with force and arms, &c., entered into twenty other messuages, barns, stables, outhouses, gardens, orchards, five hundred acres of woodland, arable, pasture, meadow, and other land, together with the mills and other buildings thereon; also, a certain other lot of five acres, in the village of Strasburgh, with the ap-

purtenances, altogether of the value of other fifty thousand dollars, of like lawful money, situate in the county, district, and State aforementioned, which Anna Catharine Brumbacker, an alien, subject of the German Empire, had demised to the said Benjamin for a term which is not yet expired.

And also, wherefore, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, with force and arms, &c., entered into twenty other messuages, barns, stables, outhouses, gardens, orchards, five hundred acres of woodland, arable, pasture, meadow, and other land, together with the mills and other buildings thereon; also, a certain other lot of five acres, in the village of Strasburgh, with the appurtenances, altogether of the value of other fifty thousand dollars, of like lawful money, situate in the said county, district, and State aforementioned, which John Jacob Zanger, an alien, subject of the German Empire, had demised to the said Benjamin for a term which is not yet expired.

And also, wherefore, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, with force and arms, &c., entered into twenty other messuages, barns, stables, outhouses, gardens, orchards, five hundred acres of woodland, arable, pasture, meadow, and other land, together with the mills and the other buildings thereon; also, a certain other lot of five acres, in the village of Strasburgh, with the appurtenances, together of the value of other fifty thousand dollars of like lawful money, situate in the said county, district, and State aforementioned, which John Jacob Argass, an alien, subject of the German Empire, had demised to the said Benjamin for a term which is not yet expired.

And also, wherefore, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, with force and arms, &c., entered into twenty other messuages, barns, stables, outhouses, gar-

dens, orchards, five hundred acres of woodland, arable, pasture, meadow, and other land, together with the mills and other buildings thereon; also, a certain other lot of five acres, in the village of Strasburgh, with the appurtenances, altogether of the value of other fifty thousand dollars of like lawful money, situate in the said county, district, and State aforementioned, which Simon White, an alien, subject of the German Empire, had demised to the said Benjamin for a term which is not yet expired.

And also, wherefore, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, with force and arms, &c., entered into twenty other messuages, barns, stables, outhouses, gardens, orchards, five hundred acres of woodland, arable, pasture, meadow, and other land, together with the mills and other buildings thereon; also, a certain other lot of five acres, in the village of Strasburgh, with the appurtenances, altogether of the value of other fifty thousand dollars of like lawful money, situate in the said county, district, and State aforementioned, which Matthew White, an alien, subject of the German Empire, had demised to the said Benjamin for a term which is not yet expired.

And wherefore, also, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, Johh Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, with force and arms, &c., entered into twenty other messuages, barns, outhouses, gardens, orchards, five hundred acres of woodland, arable, pasture, meadow, and other land, together with the mills and other buildings thereon; also, a certain other lot of five acres, in the village of Strasburgh, with the appurtenances, altogether of the value of other fifty thousand dollars of like lawful money, situate in the said county, district, and State aforementioned, which Catharina Barbara White, an alien, subject of the German Empire, had demised to the said Benjamin for a term which is not expired.

And wherefore, also, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Matthew Knox, John Keiser, Samuel Bachman, Hugh Donelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kni-

ser, John Stacy, 1st, John Stacy, 2nd, and Isaac Girvin, with force and arms, &c., entered into twenty other messuages, barns, stables, outhouses, gardens, orchards, five hundred acres of woodland, arable, pasture, meadow, and other land, together with the mills and the other buildings thereon. Also, a certain other lot of five acres in the village of Strasburgh, with the appurtenances, altogether of the value of other fifty thousand dollars of like lawful money, situate in the said county, district, and State aforementioned, which John Jacob Raiber, an alien, subject of the German Empire, had demised to the said Benjamin for a term which is not yet expired.

And also, wherefore, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burroughs, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2nd, and Isaac Girvin, with force and arms, &c., entered into twenty other messuages, barns, stables, outhouses, gardens, orchards, five hundred acres of woodland, arable, pasture meadow, and other land, together with the mills and other buildings thereon; also, a certain other lot of five acres in the village of Strasburg, with the appurtenances, altogether of the value of other fifty thousand dollars of like lawful money, situate in the said county, district, and State aforementioned, which John Ernest, an alien, subject of the German Empire, had demised to the said Benjamin for a term which is not yet expired.

And also, wherefore, the said Jabob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Matthew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, with force and arms, &c., entered into twenty other messuages, barns, stables, outhouses, gardens, orchards, five hundred acres of woodland, arable, pasture, meadow, and other land, together with the mills and other buildings thereon; also, a certain other lot of five acres, in the village of Strasburgh, with the appurtenances, altogether of the value of other fifty thousand dollars of like lawful money, situate, in the said county, district, and State aforementioned, which John Martin Gudeman, and Barbara his wife, in her right, (whose name was Kretter before marriage with her said husband,) aliens, subjects of the German Empire, had demised to the said Benjamin for a term which is not yet expired; and the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Bur-

rows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, ejected the said Benjamin from his said several premises before mentioned, and other wrongs to him did, to the great damage of the said Benjamin, and against the peace of the said United States.

And thereupon the said Benjamin, by Charles J. Ingersoll, his attorney, complains that, whereas the said George Zeller and Anne Maria, his wife, in her right, on the first day of February, in the year one thousand eight hundred and thirty-five, at the district aforesaid, had demised to the said Benjamin the said premises first before mentioned, with the appurtenances, to have and to hold the same to him and his assigns from and immediately following the execution and delivery of the said demise, for and during, and unto the full end and term of, twenty years, thence next ensuing, and fully to be complete and ended.

And also, whereas, the said John Zick, on the first day of February, in the year aforesaid, at the district aforesaid, had demised to the said Benjamin the said premises secondly before mentioned, with the appurtenances, to have and to hold the same to him and his assigns from and immediately following the execution and delivery of the said demise, for and during, and unto the full end and term of, twenty years thence next ensuing, and fully to be complete and ended.

And also, that whereas, the said Barbara Zick, on the first day of February, in the year aforesaid, in the district aforesaid, had demised to the said Benjamin the said premises thirdly before mentioned, with the appurtenances, to have and to hold the same to him and his assigns from and immediately following the execution and delivery of the said demise, for and during, and unto the full end and term, of twenty years thence next ensuing, and fully to be complete and ended.

And also, that whereas, the said Catherine Barbara Brumbacher, on the first day of February, in the year aforesaid, at the district aforesaid, had demised to the said Benjamin the said premises fourthly before mentioned, with the appurtenances, to have and to hold the same to him and his assigns from and immediately following the execution and delivery of the said demise, for and during, and unto the full end and term of, twenty years thence next ensuing, and fully to be complete and ended.

And also, that whereas, the said John Jacob Brumbacher, on the first day of February, in the year aforesaid, at the district aforesaid, had demised to the said Benjamin the said premises, fifthly before mentioned, with the appurtenances, to have and to hold the same to him and his assigns, from and immediately following the execution and delivery of the said demise, for and during, and unto the full end and term of, twenty years thence next ensuing, and fully to be complete and ended.

And also, that whereas, the said Anne Catharine Brumbacher, on the first day of February, in the year aforesaid, at the district aforesaid, had

demised to the said Benjamin the said premises, sixthly before mentioned, with the appurtenances, to have and to hold the same to him and his assigns from and immediately following the execution and delivery of the said demise, for and during, and unto the full end and term of, twenty years thence next ensuing, and fully to be complete and ended.

And also that, whereas, the said John Jacob Zanger, on the first day of February, in the year aforesaid, at the district aforesaid, had demised to the said Benjamin the said premises, seventhly before mentioned, with the appurtenances, to have and to hold the same, to him and his assigns, from and immediately following the execution and delivery of the said demise, for and during, and unto the full end and term of, twenty years thence next ensuing, and fully to be complete and ended.

And also that, whereas, the said John Jacob Argast, on the first day of February, in the year aforesaid, at the district aforesaid, had demised to the said Benjamin, the premises eighthly before mentioned, with the appurtenances, to have and to hold the same to him and his assigns, from and immediately following the execution and delivery of the said demise, for and during, and unto the full end and term of, twenty years thence next ensuing, and fully to be complete and ended.

And also that, whereas, the said Simon White, on the first day of February, in the year aforesaid, at the district aforesaid, had demised to the said Benjamin the said premises, ninthly before mentioned, with the appurtenances, to have and to hold the same to him and his assigns, from and immediately following the execution and delivery of the said demise, for and during, and unto the full end and term of, twenty years thence next ensuing, and fully to be complete and ended.

And also that, whereas the said Mathew White, on the first day of February, in the year aforesaid, at the district aforesaid, had demised to the said Benjamin the premises tenthly before mentioned, with the appurtenances, to have and to hold the same to him and his assigns, from and immediately following the execution and delivery of the said demise, for and during, and unto the full end and term of, twenty years thence next ensuing, and fully to be complete and ended.

And also that, whereas, the said Catharine Barbara White, on the first day of February, in the year aforesaid, at the district aforesaid, had demised to the said Benjamin the premises eleventhly before mentioned, with the appurtenances, to have and to hold the same to him and his assigns, from and immediately following the execution and delivery of the said demise, for and during, and unto the full end and term of, twenty years thence next ensuing, and fully to be complete and ended.

And also that, whereas, the said John Jacob Raiber, on the first day of February, in the year aforesaid, at the district aforesaid, had demised to the said Benjamin the premises twelfthly before mentioned, with the appurtenances, to have and to hold the same to him and his assigns, from and immediately following the execution and delivery of the said demise, for and during, and unto the full end and term of, twenty years thence next ensuing, and fully to be complete and ended.

And also that, whereas, the said John Ernest, on the first day of Feb.

ruary, in the year aforesaid, at the district aforesaid, had demised to the said Benjamin the said premises thirteenthly before mentioned, with the appurtenances, to have and to hold the same to him and his assigns, from immediately following the execution and delivery of the said demise, for and during, and unto the full end and term of, twenty years thence next ensuing, and fully to be complete and ended.

And also that, whereas, the said John Martin Gudeman and Barbara his wife, in her right, (whose name was Kretter before her marriage with *with* her said husband,) on the first day of February, in the year aforesaid, at the district aforesaid, had demised to the said Benjamin, the said premises fourteenthly before mentioned, with the appurtenances, to have and to hold the same to him and his assigns, from and immediately following the execution and delivery of the said demise, for and during, and unto the full end and term of, twenty years thence next ensuing, and fully to be complete and ended.

By virtue of which said several demises aforementioned, the said Benjamin Baden entered into the said premises, with the appurtenances, which the said George Zeller and Anne Maria his wife, in her right, John Zick, Barbara Zick, Catharina Barbara Brumbacher, John Jacob Brumbacher, Anna Catharina Brumbacher, John Jacob Zanger, John Jacob Argust, Simon White, Mathew White, Catharine Barbara White, John Jacob Raiber, John Ernest, and John Martin Gudeman and Barbara his wife, in her right, late Kretter, severally and respectively as aforesaid, had demised to him the said Benjamin, and he became and was thereof possessed for the said several terms so to him thereof respectively granted; and the said Benjamin Baden, being so thereof possessed, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burroughs, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy 1st, John Stacy 2d, and Isaac Girvin, afterwards, to wit, on the tenth day of the month and year aforesaid, at the said district, with force and arms, &c., entered into the said several premises, with the appurtenances, which the said George Zeller and Anne Maria his wife, in her right, John Zick, Barbara Zick, Catharine Barbara Brumbacher, John Jacob Brumbacher, Anna Catharina Brumbacher, John Jacob Zanger, John Jacob Argast, Simon White, Matthew White, Catherine Barbara White, John Jacob Raiber, John Ernest, and John Martin Gudeman, and Barbara his wife, in her right, late Kretter, had respectively demised to the said Benjamin in manner aforesaid, for the several terms by the several demises aforesaid, which are not yet expired, and ejected the said Benjamin from and out of the said several premises, with the appurtenances, and other wrongs to him then and there did, to his great damage, and against the peace of the United States.

And whereas, also, afterwards, to wit, on the first day of February, in the year aforesaid, in the district aforesaid, the said George Zeller, an

alien, subject of the German Empire, and Anne Maria his wife, also an alien, subject of the German Empire, in her right, whose name was White, before her marriage with her said husband, had demised the said premises first abovementioned, with the appurtenances, to the said Benjamin Baden, to have and to hold to the said Benjamin Baden, and his assigns, from the first day of February, in the year aforesaid, for and during, and unto the full end and term of, twenty years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said Benjamin Baden entered upon the said premises first abovementioned, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted; and the said Benjamin, being so thereof possessed, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy 1st, John Stacy 2d, and Isaac Girvin, afterwards, to wit, the tenth day of February, in the year aforesaid, at the district aforesaid, with force and arms, &c., entered into the premises first abovementioned, with the appurtenances, which the said George Zeller and Anne Maria his wife, in her right had demised to the said Benjamin Baden, in manner and for the term aforesaid, which is not yet expired, and ejected him, the said Benjamin Baden, from the said premises first abovementioned.

And also that, whereas, on the first day of February, in the year aforesaid, at the district aforesaid, the said John Zick, an alien, subject of the German Empire, had demised the said premises secondly abovementioned, with the appurtenances, to the said Benjamin Baden, to have and to hold to the said Benjamin Baden and his assigns, from the first day of February, in the year aforesaid, for and during, and unto the full end and term of, twenty years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise, the said Benjamin Baden entered upon the said premises secondly abovementioned, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted, and the said Benjamin Baden, being so thereof possessed, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy 1st, John Stacy 2d, and Isaac Girvin, afterwards, to wit, the tenth day of February, in the year aforesaid, at the district aforesaid, with force and arms, &c., entered into the premises secondly abovementioned, with the appurtenances, which the said John Zick had demised to the said Benjamin Baden, in the manner and for the term aforesaid,

which is not yet expired, and ejected him, the said Benjamin Baden, from the said premises.

And also that, whereas, on the first day of February, in the year aforesaid, at the district aforesaid, the said Barbara Zick, an alien, subject of the German empire, had demised the said premises, thirdly above mentioned, with the appurtenances, to the said Benjamin Baden, to have and to hold, to the said Benjamin Baden, and his assigns, from the first day of February, in the year aforesaid, for and during, and unto the full end and term of, twenty years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said Benjamin Baden entered upon the said premises, thirdly above mentioned, with the appurtenances, and became and was thereof possessed for the said term, so to him thereof granted; and the said Benjamin Baden, being so thereof possessed, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, afterwards, to wit, the tenth day of February, in the year aforesaid, at the district aforesaid, with force and arms, &c., entered into the premises, thirdly above mentioned, with the appurtenances, which the said Barbara Zick had demised to the said Benjamin Baden, in manner and for the term aforesaid, which is not yet expired, and ejected him, the said Benjamin Baden, from the said premises, thirdly above mentioned.

And also that, whereas, on the first day of February, in the year aforesaid, at the district aforesaid, the said Catharine Barbara Brumbacher, an alien, subject of the German empire, had demised the said premises, fourthly above mentioned, with the appurtenances, to the said Benjamin Baden, to have and to hold to the said Baden, and his assigns, from the first day of February, in the year aforesaid, for and during, and unto the full end and term of, twenty years from thence next ensuing, and fully to be complete and ended; by virtue of which demise the said Benjamin Baden entered upon the said premises, fourthly above mentioned, with the appurtenances, and became and was thereof possessed, for the said term so to him thereof granted; and the said Benjamin Baden, being so thereof possessed, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, afterwards, to wit, the tenth day of February, in the year aforesaid, at the district aforesaid, with force and arms, &c., entered into the premises, fourthly above mentioned, with the appurtenances, which the said Catharine Barbara Brumbacher had

demised to the said Benjamin Baden, in manner and for the term aforesaid, which is not yet expired, and ejected him, the said Benjamin Baden, from the said premises, fourthly above mentioned.

And whereas also, afterwards, to wit, on the first day of February, in the year aforesaid, at the district aforesaid, the said John Jacob Brumbacher, an alien, subject of the German empire, had demised the said premises, fifthly above mentioned, with the appurtenances, to the said Benjamin Baden, to have and to hold to the said Benjamin Baden, and his assigns, from the first day of February, in the year aforesaid, for and during, and unto the full end and term of, twenty years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said Benjamin Baden entered upon the said premises, fifthly above mentioned, with the appurtenances, and became and was possessed thereof, for the said term so to him thereof granted; and the said Benjamin Baden, being so thereof possessed, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Matthew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, afterwards, to wit, the tenth day of February, in the year aforesaid, at the district aforesaid, with force and arms, &c., entered into the premises, fifthly above mentioned, with the appurtenances, which the said John Jacob Brumbacher had demised to the said Benjamin Baden, in manner and for the term aforesaid, which is not yet expired, and ejected him, the said Benjamin Baden, from the said premises, fifthly above mentioned.

And also that, whereas, on the first day of February, in the year aforesaid, at the district aforesaid, the said Anna Catharine Brumbacher, an alien, subject of the German empire, had demised the said premises, sixthly above mentioned, with the appurtenances, to the said Benjamin Baden, to have and to hold to the said Benjamin Baden, and his assigns, from the first day of February, in the year aforesaid, for and during, and unto the full end and term of, twenty years from thence next ensuing, and fully to be complete and ended, by virtue of which said demise the said Benjamin Baden entered upon the said premises, sixthly above mentioned, with the appurtenances, and became and was possessed thereof, for the said term so to him thereof granted; and the said Benjamin Baden, being so thereof possessed, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Knicade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, afterwards, to wit, the tenth day of February, in the year aforesaid, at the district aforesaid, with force and arms, &c., entered into the premises, sixthly above men-

tioned, with the appurtenances, which the said Anne Catharina Brumbacher had demised to the said Benjamin Baden, in manner and for the term aforesaid, which is not yet expired, and ejected him, the said Benjamin Baden, from the said premises, sixthly above mentioned.

And also that, whereas, on the first day of February, in the year aforesaid, at the district aforesaid, the said John Jacob Zanger, an alien, subject of the German Empire, had demised the said premises seventhly above mentioned, with the appurtenances, to the said Benjamin Baden, to have and to hold to the said Benjamin Baden, and his assigns, from the first day of February in the year aforesaid, for and during, and unto the full end and term of, twenty years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said Benjamin Baden entered upon the said premises seventhly above mentioned, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted. And the said Benjamin Baden being so thereof possessed, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Matthew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, afterwards, to wit, on the tenth day of February, in the year aforesaid, at the district aforesaid, with force and arms, &c., entered into the premises seventhly above mentioned, with the appurtenances, which the said John Jacob Zanger had demised to the said Benjamin Baden in manner and for the term aforesaid, which is not expired, and ejected him, the said Benjamin Baden, from the said premises seventhly abovementioned.

And also that, whereas, on the first day of February, in the year aforesaid, at the district aforesaid, the said John Jacob Argast, an alien, subject of the German Empire, had demised the said premises eighthly above mentioned, with the appurtenances, to the said Benjamin Baden, to have and to hold to him and his assigns, from the first day of February, in the year aforesaid, for and during, and unto the full end and term of, twenty years from thence ensuing, and fully to be complete and ended; by virtue of which said demise, the said Benjamin Baden entered upon the said premises eighthly above mentioned, with the appurtenances, and became and was thereof possessed, for the said term so to him thereof granted; and the said Benjamin Baden being so thereof possessed, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, afterwards, to wit, the tenth day of Feb-

ruary, in the year aforesaid, at the district aforesaid, with force and arms, &c., entered into the premises eighthly above mentioned, with the appurtenances, which the said John Jacob Argast had demised to the said Benjamin Baden in manner and for the term aforesaid, which is not expired, and ejected him, the said Benjamin Baden, from the said premises eighthly above mentioned.

And also that, whereas, on the first day of February, in the year aforesaid, at the district aforesaid, the said Simon White, an alien, subject of the German Empire, had demised the said premises ninthly above mentioned, with the appurtenances, to the said Benjamin Baden, to have and to hold to him, the said Benjamin Baden, from the first day of February, in the year aforesaid, for and during, and unto the full end and term of, twenty years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise, the said Benjamin Baden entered upon the said premises ninthly above mentioned, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted; and the said Benjamin Baden being so thereof possessed, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, afterwards, to wit, the tenth day of February, in the year aforesaid, at the district aforesaid, with force and arms, &c., entered into the premises ninthly above mentioned, with the appurtenances, which the said Simon White had demised to the said Benjamin Baden, in manner and for the term aforesaid, which is not yet expired, and ejected him, the said Benjamin Baden, from the said premises ninthly above mentioned.

And also that, whereas, on the first day of February, in the year aforesaid, at the district aforesaid, the said Mathew White, an alien, subject of the German Empire, had demised the said premises tenthly above mentioned, with the appurtenances, to the said Benjamin Baden, to have and to hold to him, the said Benjamin Baden, and his assigns, from the first day of February, in the year aforesaid, for and during, and unto the full end and term of, twenty years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise, the said Benjamin Baden entered upon the said premises tenthly above mentioned, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted; and the said Benjamin Baden being so thereof possessed, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,)

Henry Kniser, John Stacy, 1st, John Stacy, 2nd, and Isaac Girvin, afterwards, to wit, on the tenth day of February, in the year aforesaid, at the district aforesaid, with force and arms, &c., entered into the premises tenthly above mentioned, with the appurtenances, which the said Mathew White had demised to the said Benjamin Baden in the manner and for the term aforesaid, which is not expired, and ejected him, the said Benjamin Baden, from the said premises tenthly above mentioned.

And also that, whereas, on the first day of February, in the year aforesaid, at the district aforesaid, the said Catharine Barbara White, an alien, subject of the German Empire, had demised the said premises eleventhly above mentioned, with the appurtenances, to the said Benjamin Baden, to have and to hold to him, the said Benjamin Baden, and his assigns, from the first day of February, in the year aforesaid, for and during, and unto the full end and term of, twenty years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise, the said Benjamin Baden entered upon the said premises eleventhly above mentioned, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted; and the said Benjamin Baden being so thereof possessed, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Matthew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, afterwards, to wit, the tenth day of February, in the year aforesaid, at the district aforesaid, with force and arms, &c., entered into the premises eleventhly above mentioned, with the appurtenances, which the said Catharine Barbara White had demised to the said Benjamin Baden in manner and for the term aforesaid, which is not expired, and ejected him, the said Benjamin Baden, from the premises eleventhly above mentioned.

And also that, whereas, on the first day of February, in the year aforesaid, at the district aforesaid, the said John Jacob Raiber, an alien, subject of the German Empire, had demised the said premises twelfthly above mentioned, with the appurtenances, to the said Benjamin Baden, to have and to hold to him, the said Benjamin Baden, and his assigns, from the first day of February, in the year aforesaid, for and during, and unto the full end and term of, twenty years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise, the said Benjamin Baden entered upon the said premises twelfthly above mentioned, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted; and the said Benjamin Baden being so thereof possessed, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susannah Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mat-

thew Knox, John Keiser, Samuel Bachman, Hugh Donelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, afterwards, to wit, the tenth day of February, in the year aforesaid, at the district aforesaid, with force and arms, &c., entered into the premises twelfthly above mentioned, with the appurtenances which the said John Jacob Raiber had demised to the said Benjamin Baden, in manner and for the term aforesaid, which is not yet expired, and ejected him, the said Benjamin Baden, from the premises twelfthly above mentioned.

And also, that whereas, on the first day of February, in the year aforesaid, at the district aforesaid, the said John Ernest, an alien, subject of the German Empire, had demised the said premises thirteenthly above mentioned, with the appurtenances to the said Benjamin Baden, to have and to hold to the said Benjamin Baden, and his assigns, from the first day of February, in the year aforesaid, for and during, and unto the full end and term of, twenty years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise, the said Benjamin Baden entered upon the said premises, thirteenthly above mentioned, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted; and the said Benjamin Baden being so thereof possessed, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Mathew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, afterwards, to wit, the tenth day of February, in the year aforesaid, at the district aforesaid, with force and arms &c., entered into the premises thirteenthly above mentioned, with the appurtenances, which the said John Ernest had demised to the said Benjamin Baden in manner and for the term aforesaid, which is not yet expired, and ejected him, the said Benjamin Baden, from the said premises thirteenthly above mentioned.

And also, that whereas, on the first day of February in the year aforesaid, at the district aforesaid, the said John Martin Gudeman and Barbara his wife, in her right, whose name was Kretter, before her marriage with her said husband, aliens, subjects of the German empire, had demised the said premises fourteenthly above mentioned, with the appurtenances, to the said Benjamin Baden, to have and to hold to the said Benjamin Baden and his assigns, from the first day of February, in the year aforesaid, for and during, and unto the full end and term of, twenty years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise, the said Benjamin Baden entered upon the said premises fourteenthly above mentioned, with the appurtenances, and became, and was possessed thereof, for the said term so to him thereof granted; and the said Benjamin Baden being so thereof possessed, the

said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Matthew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, executor of John Kincade,) Henry Kincade, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, afterwards, to wit, the tenth day of February, in the year aforesaid, at the district aforesaid, with force and arms, &c., entered into the said premises fourteenthly above mentioned, with the appurtenances, which the said John Martin Gudeman and Barbara his wife, in her right, had demised to the said Benjamin Baden in manner and for the term aforesaid, which is not yet expired, and ejected him, the said Benjamin Baden, from the said premises fourteenthly above mentioned, and other wrongs to him, the said Benjamin, then did to his great damage, and against the peace of the United States; wherefore the said Benjamin says that he is injured, and has sustained damage, to the value of one hundred thousand dollars; and therefore he brings suit, &c.

C. J. INGERSOLL,
Attorney for plaintiffs.

JOHN DOE,
RICHARD ROE,
Pledges to prosecute.

1835, April 11. And thereupon, the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Matthew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, by Garrick Mallery, esq., their attorney, come and defend the force and injury, when, &c., and say, that they are in no wise guilty of the trespass and ejectment aforesaid, as the said Benjamin Baden above complains against them; and therefore they put themselves upon the country.

And the said Benjamin Baden does the like.

Therefore, let a jury thereupon come before the judges aforesaid, at Philadelphia aforesaid, on the twelfth day of October next, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c. The same day is there given to the parties aforesaid, then and there, &c.

October sessions, one thousand eight hundred and thirty-five, continued.

April sessions, one thousand eight hundred and thirty-six, continued.

October sessions, 1836, continued.

April sessions, 1837, continued.

October sessions, 1837, continued.

April sessions, 1838, continued.

October sessions, 1838, continued.

April sessions, 1839, continued.
October sessions, 1839, continued.
April sessions, 1840, continued.
October session, 1840, continued.
April session, 1841, continued.

Therefore, let a jury thereupon come before the judges aforesaid, at Philadelphia aforesaid, on the eleventh day of October next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.

The same day is there given to the parties aforesaid, then and there, &c.

Afterwards, to wit, at a session of the same court, holden at Philadelphia aforesaid, before the judges aforesaid, on the 25th day of November, 1841, come the parties aforesaid, by their attorneys aforesaid; and the jurors of the jury aforesaid being called, likewise come, to wit: Edward C. Dale, John Lindsay, Henry D. Stevens, Geo. W. Jones, William Heaton, Aaron H. Burtis, Samuel B. Trout, Elhaman W. Keyser, John J. McCahen, Fishbourn Wharton, William A. Crubb, and Adam Seckel, who are duly empannelled, returned, elected, tried, and sworn or affirmed to speak the truth of the matter within contained.

And thereupon the agreement of the parties made in open court is read and filed, in the words following, to wit:

Zellers, lessee, vs. Eckhert and others, verdict entered for the defendants, and the plaintiff's depositions filed with the clerk, to be considered as in evidence, together with all the testimony given in the case of Shultheiss vs. Eckhart and others. And the charge of the court given in that case to be considered as repeated in this case, and subject to the exceptions of the plaintiff on the question of limitation and presumption.

And thereupon, the jurors aforesaid, on their oaths and affirmations aforesaid, respectively do say, that the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanna Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Matthew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, are in no wise guilty of the trespass and ejectment aforesaid, as the aforesaid Benjamin Baden above, by pleading, has alleged.

Therefore, it is considered by the court here, that the said Benjamin Baden take nothing by his declaration aforesaid, but his false complaint be in mercy, &c. And that the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susannah Eckhert Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Matthew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, go thereof without day, &c.

And it is further considered, that the said John K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susanah Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Matthew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, recover against the said Benjamin Baden the sum of for their costs and charges by them expended in their defence, in this behalf sustained, to the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susannah Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Matthew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, now here adjudged, &c. And that the said Jacob K. Eckhert, Jacob Eshleman, Jacob Eckhert, Susannah Eckhert, Henry Eckhert, John Hegans, Peter Garrah, William Hegans, Eve Herr, (widow of Tobias Herr, deceased,) Jacob B. Burrows, John Eshleman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Matthew Knox, John Keiser, Samuel Bachman, Hugh Donnelly, Adam Hass, Jacob France, David Elder, Joseph Kincade, (executor of John Kincade,) Henry Kniser, John Stacy, 1st, John Stacy, 2d, and Isaac Girvin, may have execution thereof, &c.

In the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit.

Ejectment, April sess., 1835.—*No.* 23.

BENJAMIN BADEN, lessee of Anna Maria Zeller and George Zeller, her husband, in her right, John Zick, Barbara Zick, Catharine Barbara Brumbacker, John Jacob Brumbacker, Ann Catharine Brumbacker, John Jacob Zanger, John Jacob Argast, Simon White, Matthew White, Catharine Barbara White, John Jacob Raiber, John Ennest, and John Martin Gurman and Barbara his wife, in her right.

vs.

LAWRENCE LANCASTER, with notice to Jacob R. Eckert, Jacob Eshelman, Jacob Eckert, Susannah Eckert, Henry Eckert, John Higgins, Peter Garrah, William Higan, Tobias Herr, Jacob B. Burrows, John Eshelman, James Girvin, Robert Girvin, James Whitehill, Benjamin Herr, Abraham Herr, Matthew Knox, John Keiser, Samuel Backman, Hugh Donnelly, Adam Hess, Jacob France, Henry Kniser, David Elder, Joseph Kincade, exr. of John Kincade, John Stacey, and Isaac Girvin.

And now, to wit, July 25, 1841, a jury being duly empannelled, sworn, and affirmed, to try the issue joined between the said parties: The plaintiffs, to support the issue upon their part, gave in evidence

to the court and jury, the depositions of Elizabeth Schweizwalder and Christian Schweickard, prout said depositions.

And the defendants, to maintain the issue upon their part, called John Slaymaker, who being duly sworn, testified, that he is 68 years of age and upwards, and that he knows the land upon which the defendants reside, and knew it well in the lifetime of old Frederick Weiss, who lived and died upon the land; that old Frederick Weiss died in the year 1798, and left a widow and one child named Frederick Weiss. During the same year that old Frederick Weiss died, his widow was married to George Eckert, and they had a son born in the year 1799, which was called Jacob K. Eckert, and Jacob K. Eckert was two or three years old when young Frederick Wiess died. George Eckert and his wife lived upon the land, occupied and farmed a part, and leased the residue thereof to tenants, who lived upon the land, occupied and improved it, and paid the rent to George Eckert, during the time that he had charge of the same, until it came into the hands of Jacob K. Eckert, who lived upon a part of the land, and claimed it as his own, and leased the residue to tenants, who lived upon it, and occupied it, and they paid taxes upon it—I know they paid taxes to me some years, when I was the supervisor of that township. The land has been always occupied, cultivated, and improved by the defendants, or some of them, and by the persons under whom they claim, ever since the death of old Frederick Weiss, in 1798, to the present time; and there have always been persons actually living upon the land, and they, or some of them, have made large and valuable improvements upon the same. Jacob Eshelman has expended, in permanent improvements, upon that part of the land occupied by him, at least $5,000, in buildings, fencing, and other improvements.

The defendants also gave in evidence, the record of the following suit in the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, of October sessions of 1816, of which the following is the docket entry, to wit:

No. 44.—*Oct. sess.*, 1816.—Ejectment, as of April sessions, 1816.

RICHARD SMITH, an alien, lessee of Anna Maria Banert, by her guardian John George Johner; Maria Catharina Banert, by her guardian George Adam Wenger; Maria Elizabeth Banert, by her guardian John Ulrich Fichter; John Martin Banert, by his guardian John George Schmidt; John Jacob Banert, by his guardian Matthias Gis; Rosina Barbara Banert, by her guardian Bartholomew Schringer; Christian Banert, by his guardian Ludwig Diehter; and John Ulrich Banert, by his guardian Nicholas Grelper—all aliens.

vs.

WILLIAM STILES, with notice to Geo. Eckert, jun'r, Andrew Stewart, and Joseph Bowers.

1816, Oct. 14.—Ret'd "served."—Mr. Ewing appears for Geo. Eckert, junior, Andrew Stewart, and Jos. Bowers pleads not guilty, and enters into the common rule.

1818, Nov. 9.—Agreement of compromise and adjustment, (dated 22 April, 1818,) upon the following terms filed.

1. That the property in dispute be appraised by seven men, to be chosen by the parties, any six of whom may view the premises, and of whom, five of those who have so viewed the premises, must agree to make a valuation; that the plaintiff be entitled to one-third of the said valuation, and the step-brother of Frederick Weiss, jun'r, deceased, for whom defence is taken, shall be entitled to the other two-thirds; that it shall be ascertained by lot, who shall have the election to take the land or the valuation, which election shall be made within three days from the valuation being made known in writing, and the amount of the valuation money coming to the opposite party, paid on the delivery of a deed, releasing and conveying, in fee simple, all the right, title, claim, and interest of the party so receiving the valuation money, which release and conveyance shall be delivered in twelve months from the time of election, so as aforesaid to be made. That if the plaintiff elect to take the land, reasonable and sufficient security to be given, that the minor step-brothers of Frederick Weiss, jun'r, will make a title when of age, and that in pursuance of the first clause of this agreement, the parties appoint Adam Reigart, Henry Reigart, John Slaymaker, John Buckbill, Jacob Eshelman, Henry Buckbill, and Isaac Ellmaker, to make the appraisement of the lands and tenements for which the ejectment is brought —the meeting for the purpose of appraisement to take place on the 2d day of May, 1818, the costs to be equally divided between the parties.

The appraisers value and appraise the whole of the said lands and tenements, with the appurtenances, for the sum of twenty-four thousand one hundred and seventy dollars, subject to the payment of the monies due or to become due to the commonwealth of Penn'a, upon the said lands, by the person to whom the same shall fall, under the operation of the agreement under which the appraisement is made—2nd May, 1818.

Agreement, dated 6 Nov., 1818, then to ascertain, by lot, who shall take the land or the valuation, when it was ascertained, by lot, in favor of the plff., who thereupon elected to take the land according to the agreement.

1821, Oct. 30.—On motion of Mr. Sergeant, rule upon the plaintiff to shew cause, on Tuesday, the 6th of November next, why judgment should not be entered upon the award made in this case.

1822, Nov. 13.—Rule discharged.

Pro ut the record of said suit, the agreement, appraisement, and acceptance of the same, at the valuation, a copy of which is hereunto annexed.

The defendants also gave in evidence a certified exemplification of the record of a suit in the district court for the city and county of Lancaster.

JACOB ECKHERT, jun'r.
vs.
ANNA MARIA BONERT, et al. } No. 37.

Sept. term, 1823.—Foreign attachment in debt.

Judgment, writ of enquiry, bond, fi. fa., inquisition and venditioni exponas and returns. Pro ut said record, a copy of which is hereunto annexed.

The defendants also gave in evidence three deeds of William White, sheriff of Lancaster county, to Jacob Eckert, jun'r, dated on the thirteenth day of December, A. D. 1824, duly executed and acknowledged in open court, and entered in the district court for the city and county of Lancaster, at December term, 1824, page 138, conveying all the land in dispute to the said Jacob Eckert, junior.

Also deeds from Jacob Eckert, junior, and wife, to Jacob Eshelman, dated on the 5th of April, 1830, duly acknowledged and recorded, and to John Kincade, dated the 3d of April, A. D. 1827, and to Jacob Frantz, dated the 3d of April, A. D. 1827.

Also a deed from the same to John Yoder, sen'r, dated the 29th day of November, A. D. 1827; all of which deeds are duly acknowledged and recorded, conveying all the lands in dispute to the grantees therein named.

The defendants also gave in evidence the record of the two suits, of which the following are the docket entries, to wit:

In the circuit court of the United States, in and for the eastern district of Penn'a, in the third circuit.

October session, 1816. *Number* 46. Ejectment as of April sess'ns, 1816.

RICHARD SMITH, an alien, lessee of Anna Maria Banert, by her guardian John George Johner, Maria Catharina Banert, by her guardian George Adam Wenger, Maria Elizabeth Banert, by her guardian John Ulrich Fichter, John Martin Banert, by his guardian, Jno. Geo. Schmidt, John Jacob Banert, by his guardian Matthias Gis, Rosina Barbara Banert, by her guardian Bartholomew Schringer, Christian Banert, by his guardian Ludwig Diehter, and John Ulrich Banert, by his guardian Nicholas Grelper, all aliens.

vs.

WILLIAM STILES, with notice to Geo. Eckert, jr., and Andrew Ferguson.

1816, Oct. 14.—Ret'd "served." Mr. Ewing appears for George Eckert, jun'r; pleads not guilty, and enters into common rule.

1818, Nov. 9.—Same agreement of compromise and adjustment as in the preceding action filed.

1821, Oct. 30.—On motion of Mr. Sergeant, rule upon the pl'ff to

show cause on Tuesday, the 6th of November next, why judgment should not be entered upon the award made in this case.

1822, Nov. 13.—Rule discharged.

Prout said record, a copy whereof is hereunto annex'd.

In the circuit court of the United States, in and for the eastern district of Penn'a, in the third circuit.

October session, No. 45.—Ejectment as of April sess., 1816.

RICHARD SMITH, an alien, lessee of Anna Maria Banert, by her guardian John George Johner, Maria Catharina Banert, by her guardian Geo. Adam Wenger, Maria Elizabeth Banert, by her guardian John Ulrick Fichter, John Martin Banert, by his guardian John George Schmidt, John Jacob Banert, by his guardian Matthias Gis, Rosina Barbara Banert, by her guardian Bartholomew Schringer, Christian Banert, by his guardian Ludwig Diehter, and John Ulrich Banert, by his guardian Nicholas Grelper, all aliens.

vs.

WILLIAM STILES, with notice to George Eckert, and James Stewart.

1816, Oct. 14.—Ret. "served;" Mr. Ewing appears for George Eckhert, jun'r, and James Stewart; pleads not guilty, and enters into the common rule.

1818, Nov. 9.—Same agreement of compromise and adjustment, as in the preceding action filed.

1821, Oct. 30.—On motion of Mr. Sergeant, rule upon the plaintiff to show cause on Tuesday, the 6th of November next, why judgment should not be entered upon the award made in this case.

1822, Nov. 13.—Rule discharged. Pro ut said record, a copy whereof is hereunto annexed.

The defendants gave in evidence, also, the records of the three following suits in the circuit court of the United States, in and for the eastern district, to wit:

Richard Smith, an alien, lessee of Christian Banert and Rosina his wife, aliens,

vs.

George Saunders, a citizen of the Commonwealth of Penn'a, with notice to John Day, Jacob Kern and George Eckhert, tenants in possession.

} October sessions, 1810, No. 46.

Plaintiff being called, comes not, but makes default, and suffers a non suit.

Richard Smith, an alien, lessee of Christian Banert and Rosina his wife, aliens, vs. George Saunders, a citizen of the Commonwealth of Penn'a; with notice to James McCurdy. } October sessions, 1810, No. 47.

Richard Smith, an alien, lessee of Christian Banert and Rosina his wife, aliens, vs. George Saunders, a citizen of the Commonwealth of Penn'a, with notice to James Stewart. } October sesssions, 1810. No. 48.

Same, non suit. Prout said record, a copy whereof is hereunto annexed.

The defendants also gave in evidence the depositions of Henry Kerns, George Keiser, sen'r, Lydia Hoss, Adam Hoss, John Slaymaker, Robert Ferguson, George Fogel, Fred. K. Rodgers, Daniel Slaymaker, and John Lightner, copies of which depositions are hereunto annexed.

The defendants also gave in evidence a certified copy of the administration account of George Eckhert and wife, upon the estate of Frederick Weiss, and a settlement of the same. Pro ut said account, a copy of which is hereunto annexed.

The defendants also gave in evidence certified copies of the following suits or actions, from the court of common pleas of Lancaster county, to wit:

Anna Shultzheiss, vs. George Eckhert. } No. 117, of August term, 1809.

Jacob Linderman and wife, vs. George Eckhert, et al. } No. 115, of August term, 1809.

Anna Maria Shultzheiss, vs. George Eckhert, et al. } No. 116, August term, 1809.

Matthias Shultzheiss, vs. George Eckhert, et al. } No. 118, August term, 1809.

Christian Banert and Rosina his wife, vs. George Eckhert, Jacob Kern, et al. } No. 123, August term, 1809. Ejectment.

Christian Banert and Rosina his wife, vs. George Miller. } No. 135, August T. 1806. Ejectment.

Christian Banert and Rosina his wife, vs. James Stewart. } No. 136, August T., 1806. Ejectment.

Christian Banert and Rosina his wife, vs. Samuel Moore. } No. 137, August T., 1806. Ejectment.

Jeremiah Grasser, and Margaretta his wife, vs. George Eckhert. } No. 114, August T., 1809.

All of which suits were arbitrated, and awards made and returned in favor of the defendants, and the plaintiffs discontinued all of said suits on the 26th of June, 1810. Pro ut said records, copies of all which are hereunto attached, together with the testimony taken upon commission issued in the suits Nos. 114 and 115, of August term, 1809.

SCHULTHEISS, et al. vs. ECKHART, et al.

Henry Kerns affirmed, says: I knew Frederick White; I lived there with him [at] the time he died; I knew young Frederick White; he was about 3 or 4 years of age when his father died; the widow of Frederick White lived on the place, after his death, one year; she was married in the course of one year; I lived with her, and farmed the place for her under my father, on the shares; after the widow White left the place, Thomas Harris rented the place, and Pinkerton rented the mill, and both paid the rent to George Eckert; George Keiser rented the land after Harris left it; Keiser rented from George Eckert, and paid him the rent; after Pinkerton left the mill, Robert Rodgers rented the mill from George Eckert, and paid him the rent; after George Keiser left the place, my brother Jacob Kerns farmed the place on the shares for George Eckert; shortly after I worked the farm and mill, on the share for George Eckert, for three years; after I left the place, Jacob Stambaugh rented the place from George Eckert, and paid him the rent, or worked it on the shares; after that, I am not certain which, but Henry Brackbill had it rented, and John Sentman had it rented from George Eckert, and paid him the rent; it was generally understood that George Eckert still received the rent till the place was sold; Eckert also received the rent of the other tracts that were of White, after White's decease, George Eckert exercised the rights of owner of all White's land, and cut timber on all of the other tracts to repair the mill, and for other purposes, by Eckert's orders; George Eckert and the widow White were married in the same year that Frederick White died; I was along at the wedding at Lancaster; I lived with the widow at that time. Jacob K. Eckert was born in about one year after they were married; old Frederick White died in March, and the widow was married to George Eckert shortly before Christmas, the same year; I think from the will being so dated. Frederick White died in 1798, young Frederick White died when he was over six years of age.

Henry Kerns again called on March 18th, deposeth and saith.

Quest. by A. Schindler. Had Frederick White any relations in Germany?

Answer. He, White, said [he had] one sister older than himself, he said he had no other; I did not know Frederick Derr, I heard old Frederick White say, he sent out to Germany about his sister by Frederick Derr, but could find no word of her; I do remember Adam Draucker; I remember of him leaving this country, and it was said he went to Germany; I do not remember what he went for, but the report was that he went to find the heirs of Frederick White; I did not hear him say so; I might have heard it, but do not recollect; I remember his return, he brought no heirs with him; I do not know whether I heard it from Draucker or of others; but I heard that he, Draucker, looked for heirs, but found none; I think he said that he looked through all Germany for White's heirs, but found none; this was a short time after old White died; I was then about 20 years old, I am now about 61 years of age; I know of nothing else. I remember John Smoker living on the Mill property; after he left it Jonathan Worrell came to the place; then after that I farmed the land; Smoker and Worrell worked the place on the shares for Eckart; I know this by my helping to divide the grain for them; I know the Strasburg lot now owned by John Stacey; it was all unimproved and under timber; I remember a man of the name of Miller had the pasture of it under George Eckert.

HENRY KEARNS.

Affirmed to, and subscribed before me, March 18, 1840; taken the 17 and 18 March, between 9 A. M. and 6 P. M., each day.

ADAM FOGLE.

George Keiser, senior, sworn, deposeth and saith, that he lived four years on the Mill place, and paid fifty pounds a year rent. I moved on the property about the year 1800, and leased it from George Eckert, and paid him the rent. I had the stills, and liberty to cut wood for stilling. I know that I leased it from George Eckert, by having the lease in my possession at present. Thomas Harris had the place one year before I came to it, and he paid the same rent for it to Eckert. Jacob Kearns came to the place after I left it, which was A. D. 1803 or '4; Jacob Kearns is now living in the west. After I left the place, John Smoker rented it; I think so because I stilled for him; both of them rented under Eckert; George Eckert claimed rent, and took property and sold it for rent, from James Stewart, who lived on the Mine tract, which had belonged to White; I was the crier when the goods were sold for the rent. I knew young Frederick White, but do not remember how old he was. I saw him running about; I think he was about 4 or 5 years old when I saw him.

GEORGE KEISER.

Sworn to and subscribed before me, on 17th March, between the hours of 9 A. M. and 6 P. M.

ADAM FOGLE.

Lydia Hoss affirmed, deposeth and saith: I, myself, did not know Frederick White, but my mother lived with Frederick White from [the

time] she was two years old till she was married, which was before the death of old Frederick White; she married to James Stewart; old Frederick put my father and mother on what is called the Mine place, on condition to build a house and clear the land. There was no building but an old house, not tenantable; they lived on that land about thirty years; for twelve years he paid no rent, but for eighteen years, in Eckert's time, they had to pay rent, after the death of old Frederick White. In consequence of the agreement between old Frederick and my father, they paid no rent till after the decease of old Frederick, when the property came into Eckert's hands; that they had to pay rent to him. Edward Campbell came to the place after they left it; he had only the house rented, and occupied it till it was sold. My father had the whole tract, which is now divided into several pieces; it was then mostly wood land. I heard my mother [say] that Frederick White had a full sister in Germany; she said that Frederick tried means to find her out, but could not; that he sent for her, but could not find her. I knew that, among others, Adam Draucker went out, and was one year gone, but could not find her. I know that he returned to this country; he went out on purpose to find her. I heard my mother say, that old Frederic White said his sister was older than him.

her
LYDIA ⋈ HOSS.
mark.

Affirmed and subscribed, by her mark, before me, on the 17th March, between the hours of 9 A. M. and 6 P. M.

ADAM FOGLE.

Adam Hoss, affirmed, deposeth and saith: I knew old Frederick White by sight, but was not acquainted with him. Frederic White then lived at the Mill place, now owned by Jacob Eshleman; he was at that time married; I think he died on the mill property, and my reason for thinking so is, that the widow lived on the place afterwards. I remember young Frederic White well; he went to school with me at Lightner's school house; he came to school with Eckert's children. I heard of young Frederic White's death; he died a sudden death, and [I] remember it the more on that account; he died at George Eckert's. Young Frederic White was a stout boy when he came to school, appearingly 6 or 7 years old. I heard my mother-in-law say, that Jacob K. Eckert was about 2 years old, when young Frederic died. My mother-in-law's name was Nancy Allison, who afterwards married James Stewart. I heard my mother-in-law say, that old Frederic had told her he had a full sister in Germany; that he had sent a man of the name of Frederic Derr to Germany, to find her out. I knew Adam Draucker well, and he went to Germany with a full intent to find out Frederick White's heirs. The day he started to go to Germany, he stopped at my father's house, and told my father that he was going with the express purpose to find out White's heirs, on account of a disagreement between himself and George Eckert. I heard him tell my father so. I was then fifteen

years of age; my present age is fifty-four years. Adam Draucker returned, but brought none of the heirs. He brought Germans with him, but none who claimed kindred with White. Draucker, at the time he was going out, said, if there *was* heirs in Germany to White, he would do his endeavor to find them out. My father-in law, James Stewart, told me he had the property called the Mine tract, for twelve or thirteen years, from old Frederic White, without paying rents, by agreement to improve; afterwards Mrs. White or the executors craved no rent from him, till George Eckert demanded rent of him, he was the first. White told my father in law (he, Stewart) said, that he should remain there to live till White would tell him to go away, and that without rent, only to improve, by White's directions; then, after White's death, he thought he would pay no rent because White had not told him to leave it. Then George Eckert came to him with an agreement, and got him to sign it, and after that, Eakert required rent of him, and took out execution, and sold his cows and other property, for rent. I know that he, Stewart, paid rent to George Eckert for that place, he held it from Eckert by writing for three years, and one year after it was sold to Knox. I remember of G. Eckert making saw-logs and rails on the Mine tract, and hauling them away; Henry Kerns hauled the saw-logs. I knew several that lived on the Mill place, and it was generally understood they had rented from George Eckert. James Stewart partly built the house on the Mine tract; the old one was untenantable, I remember, for the last twenty years, there was a tenant house on the Bragooner tract, now owned by John Hegans. I remember of Andrew Ferguson living on it, and I believe that he rented from George Eckert. I heard James Stewart say, that he lived on the Mine place about thirty years.

ADAM HOSS.

Affirmed and subscribed before me, on the 17th of March, between 9 o'clock A. M. and 6 P. M.

ADAM FOGLE.

John Slaymaker sworn, deposeth and saith: I knew old Frederic White very well, it was said he came from Germany, and I believe he did; my grandfather came from Germany also, and I heard my father say, that my grandfather gave him a piece of land to settle on. I think from what I heard my father say, that Frederic White was in this country before Braddock's war, which was 1755; when I first knew White, he lived at the Mill property, he had a mill and hemp mill, that was in 1776 or '7, after the commencement of the revolutionary war; I have milled hemp for ourselves at his hemp mill; Frederic White was often there with me at the mill. I never heard White say he had any relatives in Germany, but I had heard my father say, that Frederick White had either a sister or half-sister in Germany, I do not know which. I knew Frederic Derr, I know that he started to go to Germany, I recollect it very well, he had a family of one daughter and four sons, some of them of my age, and I recollect from that circumstance of them fretting for their father; they were schoolmates of mine. I do not remember what his busi-

time] she was two years old till she was married, which was before the death of old Frederick White; she married to James Stewart; old Frederick put my father and mother on what is called the Mine place, on condition to build a house and clear the land. There was no building but an old house, not tenantable; they lived on that land about thirty years; for twelve years he paid no rent, but for eighteen years, in Eckert's time, they had to pay rent, after the death of old Frederick White. In consequence of the agreement between old Frederick and my father, they paid no rent till after the decease of old Frederick, when the property came into Eckert's hands; that they had to pay rent to him. Edward Campbell came to the place after they left it; he had only the house rented, and occupied it till it was sold. My father had the whole tract, which is now divided into several pieces; it was then mostly wood land. I heard my mother [say] that Frederick White had a full sister in Germany; she said that Frederick tried means to find her out, but could not; that he sent for her, but could not find her. I knew that, among others, Adam Draucker went out, and was one year gone, but could not find her. I know that he returned to this country; he went out on purpose to find her. I heard my mother say, that old Frederic White said his sister was older than him.

her
LYDIA ⋈ HOSS.
mark.

Affirmed and subscribed, by her mark, before me, on the 17th March, between the hours of 9 A. M. and 6 P. M.

ADAM FOGLE.

Adam Hoss, affirmed, deposeth and saith: I knew old Frederick White by sight, but was not acquainted with him. Frederic White then lived at the Mill place, now owned by Jacob Eshleman; he was at that time married; I think he died on the mill property, and my reason for thinking so is, that the widow lived on the place afterwards. I remember young Frederic White well; he went to school with me at Lightner's school house; he came to school with Eckert's children. I heard of young Frederic White's death; he died a sudden death, and [I] remember it the more on that account; he died at George Eckert's. Young Frederic White was a stout boy when he came to school, appearingly 6 or 7 years old. I heard my mother-in-law say, that Jacob K. Eckert was about 2 years old, when young Frederic died. My mother-in-law's name was Nancy Allison, who afterwards married James Stewart. I heard my mother-in-law say, that old Frederic had told her he had a full sister in Germany; that he had sent a man of the name of Frederic Derr to Germany, to find her out. I knew Adam Draucker well, and he went to Germany with a full intent to find out Frederick White's heirs. The day he started to go to Germany, he stopped at my father's house, and told my father that he was going with the express purpose to find out White's heirs, on account of a disagreement between himself and George Eckert. I heard him tell my father so. I was then fifteen

years of age; my present age is fifty-four years. Adam Draucker returned, but brought none of the heirs. He brought Germans with him, but none who claimed kindred with White. Draucker, at the time he was going out, said, if there *was* heirs in Germany to White, he would do his endeavor to find them out. My father-in law, James Stewart, told me he had the property called the Mine tract, for twelve or thirteen years, from old Frederic White, without paying rents, by agreement to improve; afterwards Mrs. White or the executors craved no rent from him, till George Eckert demanded rent of him, he was the first. White told my father in law (he, Stewart) said, that he should remain there to live till White would tell him to go away, and that without rent, only to improve, by White's directions; then, after White's death, he thought he would pay no rent because White had not told him to leave it. Then George Eckert came to him with an agreement, and got him to sign it, and after that, Eakert required rent of him, and took out execution, and sold his cows and other property, for rent. I know that he, Stewart, paid rent to George Eckert for that place, he held it from Eckert by writing for three years, and one year after it was sold to Knox. I remember of G. Eckert making saw-logs and rails on the Mine tract, and hauling them away; Henry Kerns hauled the saw-logs. I knew several that lived on the Mill place, and it was generally understood they had rented from George Eckert. James Stewart partly built the house on the Mine tract; the old one was untenantable, I remember, for the last twenty years, there was a tenant house on the Bragooner tract, now owned by John Hegans. I remember of Andrew Ferguson living on it, and I believe that he rented from George Eckert. I heard James Stewart say, that he lived on the Mine place about thirty years.

ADAM HOSS.

Affirmed and subscribed before me, on the 17th of March, between 9 o'clock A. M. and 6 P. M.

ADAM FOGLE.

John Slaymaker sworn, deposeth and saith: I knew old Frederic White very well, it was said he came from Germany, and I believe he did; my grandfather came from Germany also, and I heard my father say, that my grandfather gave him a piece of land to settle on. I think from what I heard my father say, that Frederic White was in this country before Braddock's war, which was 1755; when I first knew White, he lived at the Mill property, he had a mill and hemp mill, that was in 1776 or '7, after the commencement of the revolutionary war; I have milled hemp for ourselves at his hemp mill; Frederic White was often there with me at the mill. I never heard White say he had any relatives in Germany, but I had heard my father say, that Frederick White had either a sister or half-sister in Germany, I do not know which. I knew Frederic Derr, I know that he started to go to Germany, I recollect it very well, he had a family of one daughter and four sons, some of them of my age, and I recollect from that circumstance of them fretting for their father; they were schoolmates of mine. I do not remember what his busi-

ness was to Germany. Frederic White sent by Frederic Derr for his sister, and for some books he was to purchase for him, and sent the money along. Derr was gone about one year, he returned without finding any relatives of White, but he brought the books; this was previous to Frederic White's marriage to his second wife; he was then either a widower, or perhaps his first wife was living. I remember the time Frederic White was married to Miss Kerns, he was married about the year 1794; I was then between 21 and 22 years of age, I am now sixty-eight years old. I have frequently seen young Frederic White; old Frederick White died in the year 1798; I remember it for this reason, his funeral was a few days after I was married, and the first place we (my wife and I) went to, was to old Frederic White's funeral. The first place my wife and I went abroad, was to Frederic White's funeral; he died at his residence at the Mill property, the widow remained from March to some time about the beginning of the year, some 8 or 9 months on the property with the infant, young Frederic White; the widow was married to George Eckert, some time in fall of 1798, perhaps in the month of December. In the interval between the death of old Frederic White and the marriage of the widow with Eckert, Adam Draucker managed the estate chiefly for her. I think Henry Brogooner lived on the Brogooner tract, now owned by John Hagens, at the time of old Frederic White's death. I do not know the name of the tenant on the Mine tract, but there was a tenant there. I do not know who the rent was paid to by the tenants, during the time of the widow White, till her marriage with Eckert; after Eckert and the widow were married, they left the Mill place, and went to the Forge for 2 or 3 years, then moved to a tenant house on the end of the place, and commenced building a house and barn, and then at that time young Frederic White died. I suppose he was about 7 years old, he went to school before his death. Jacob K. Eckert was born in the year 1799, his mother was the widow of old Frederic White, and his father, George Eckert; Jacob K. Eckert was 2 or 3 years old at the death of young Frederic White. Shortly after the marriage of George Eckert with the widow, he, Eckert, assumed the management of all the estate of old Frederic; I think he received the rent, and acted as landlord. Jacob K. Eckert is now living. I have no doubt that George Eckert paid the taxes for the land; some years after I was supervisor, and he paid me the road tax, which makes me believe he paid all the taxes. I have known several tenants living at the Mill place, and that they all rented from George Eckert. I knew Andrew Ferguson that lived on the Bragooner place, and the tenant on the Mine tract, they rented from George Eckart. I knew Adam Draucker, he served his time with my father. Shortly after the death of young Frederic White, he went to Germany, his object was to search out heirs of old Frederic White, on account of a disagreement between him and George Eckert; he was gone about one year; I do not recollect that on his return he said any thing to me, but I heard from others he had told, that he found heirs, but none came in; there were several contradictory stories, and this was one. I understood that Mr. Deimling was acting as the

agent of the heirs of Frederic White, deceased, on the suit between them and Eckert, had been a long time in law, but was compromised and settled, Eckert to get two-thirds, and Deimling for the heirs, one-third; the land was then valued by a jury at upwards of $24,000, I know this to be fact, I was one of the appraisers. I did not mean to say, that Frederic White sent with Frederic Derr for his sister, but I meant to say, he went out to enquire for her; when he came back, report says, he did not find her.

JOHN SLAYMAKER.

Sworn and subscribed before me, on 17th March, between the hours of 9 A. M. and 6 P. M., 1840.

ADAM FOGLE.

Robert Ferguson affirmed, deposeth, and saith: I did not know Frederic White, he was dead before I came to this country. I know his widow, after she was married to Eckert; in the year 1814, my brother Andrew rented the Bragrooner place from Jacob K. Eckert, he lived there fifteen years, and after that, I rented it one year. Jacob K. Eckert acted for his father George Eckert; we both paid the rent to Jacob K. Eckert. James McCurdy was tenant one year before my brother came there; at that time there was a tenant house on that tract, my brother John Ferguson moved on it when I left it about the year 1830; John was two years on that place, and paid rent to Jacob K. Eckert; after that, Joseph McAnelly came on the place, then John Hagens came next, and shortly after Hagens bought it. Eckert paid the taxes for the Bragooner place, while I and my brothers lived on it. I knew Adam Draucker, I understood from the talk with him, that he had been in Germany to search for the heirs of Frederic White.

ROBERT FERGUSON.

Affirmed and subscribed before me, on the 17th day of March, between the hours of 9 A. M. and 6 P. M.

ADAM FOGLE.

George Fogle affirmed, deposeth, and saith: I knew old Frederic White about the year 1784 and '5; I came to Pennsylvania about the year 1782; in 1785, he then resided on the Mill property, now owned by Jacob Eshleman. I knew that White came from Germany by hearsay, and from his pronunciation; I know not from what part he came from; he had come to the United States twenty years before I was acquaint[ed] with him; I think he was then at that [time] married, and I remember of a funeral at his place, but cannot remember if it was his wife or his mother-in-law, who also lived on the place. He had a grist mill and hemp mill; also carried on stilling. I heard old Frederic speak of having relatives in Germany, a sister and a brother, I do not know a full brother, but the sister was a full sister; I heard him tell this to old James Kenny, the sister was older than him; I remember this from one day passing round the northeast corner of Frederic's house. Frederic White and old James Kenny was sitting under the apple tree before the

house. I was always a great favorite of old Mr. White, and when I came near him, he remarked to Mr. Kenny, that he liked me because I put him in mind of his brother in Germany, and that I was of the same name of his brother, and that he liked me the more for that. Mr. Kenny then asked him, if he had any other relatives in Germany; he said he had one sister, that she was older than him. I was then about fourteen years of age, I am now about sixty-five years old.

I recollect Frederic Derr, of seeing him; I know of his going to Germany, but do not know what for; I recollect the marriage of Frederic White and Miss Kerns; I was at the wedding; this was in 1792 or '93; after his marriage, he still resided on the Mill property. I saw young Frederic White, bnt do not know when he was born; I remember the death of old Frederic White, he died on the Mill property; I do not know the age of young Frederic at the time of his father's death, but I saw him walk the day of the funeral; I do not know how long she remained on the place after the death of old Frederic, nor can I remember the time she married Mr. George Eckert; I do not know of the birth of Jacob K. Eckert, nor of the death of Frederic White, the younger, but I think young Frederic was about 6, 7, or 8 years old when he died; I knew several persons who had the Mill place rented, and do think they paid the rent to George Eckert, until his son Jacob became of age; the other tracts all were the same; that George Eckert was considered the landlord. I knew Adam Draucker; I lived his neighbour nine years; he was one of the executors, and with the widow managed the estate for some short time, and know from Draucker, that on account of a disagreement with George Eckert in some part, that he went to Germany for the purpose of finding White's heirs, and for other purposes. He also had a commission from my father to find out his relations in Germany, and brought such a return that was satisfactory. I never heard that he found any heirs of White, but always understood he made search; old Frederick White was about 80 years of age when he died.

GEORGE FOGLE.

Affirmed and subscribed before me, March 17th, 1840, between the hours of 9 A. M. and 6 P. M.

ADAM FOGLE.

Frederick Rodger sworn, deposeth and saith: I knew Frederick White well; I was named after him, and lived with him when I was a boy. I understood he came from Germany; I never heard him say so; I do not know when he came to this country; I did not know Frederic Derr; I often heard of him; I do not remember the year, but I remember of old White's death; I was then a boy of about 10 or 11 years old; I am *not* about 65 years old; I do not recollect the time of the marriage of old Frederic to his second wife. I recollect that they had one child, but do not remember his age, when the old man died. Frederic White, the old man, died on the Mill place, now owned by Mr. Eshleman; I lived with old Mr. White, when he died; the widow and the infant lived on

the place after old White's death, some time till after she was married the second time; I believe that the widow managed the property after White's deccase, till after her second marriage; I do not remember the year the widow married George Eckert; I remember the death of young Frederic White; I do not remember his age when he died; I knew several persons who lived on the Mill property after old White's decease, and they all farmed on the shares, or rented from George Eckert; he had the whole management of the property; I knew Adam Draucker well; I lived with him, and drove team for him; I went to live with him about 3 or four months after he returned from Germany; I heard of his going out, but do not know the time; he was about a year gone; Adam Draucker told me himself the reason he went to Germany; he went out on the express purpose of finding an heir to the estate of old Frederic White; he told me so in his own house; the reason was a disagreement with George Eckert, and on that account he went to Germany to find the heirs of old Frederic, he being dissatisfied with the marriage of the widow with George Eckhert; he said he was promised fifty pounds on the marriage of the widow with Eckert, but was disappointed, and said he would have satisfaction, and this was the method he took for satisfaction; he told me he went to Germany expressly to find heirs, but found none, neither brother, sister, or relation of any kind; that among other means, he advertised for them, but could hear or find of none. The only man brought forward by Draucker was Deimling, who is now dead. I know the Mine tract well; it was the property of Frederic White; I knew several persons that lived on it, and they all paid rent to George Eckert; my stepfather lived 21 years or more on this place after the death of old Frederic, and paid the rent to George Eckert; George Eckert cut timber on this land whenever he chose, and prevented others from cutting; I cut some posts for my stepfather, James Stewart, and was discharged by George Eckert, who took the posts and paid me for my trouble; at the time of old White's death, there was a tenant house on the Mine tract; this tract is the one now owned by James Barry, Jacob Frantz, jun'r, and others, and whoever occupied this land paid rent to George Eckert until he sold; I knew the Bragooner tract, as part of old Frederic White's estate; I used to haul apples from Bragooner tract to old White's still for stilling; I think Henry Bragooner lived on that place at the time of old White's death; I remember Edward Campbell living on the Bragooner tract, and after he left it, he moved to the Mine tract; I do not remember who took the Bragooner tract after Campbell, but I remember of Andrew Ferguson living there; he paid the rent to George Eckert; after Andrew Ferguson left it, his brother, John Ferguson rented it, and after that, I do not remember who rented next, but they all rented from and paid George Eckert the rents; I remember the Strasburg lot now owned by John Stacey; it was a part of the property of Frederick White, deceased; I do not remember any thing about the renting of it; but I remember since the death of White, some person, I think, Daniel Miller, cut a fine black oak tree off this lot, and made shingles of it without

George Eckert's knowledge, and after Eckert found it out, the man compromised with him, because Eckert threatened to sue him.

FREDERICK RODGERS.

Sworn and subscribed before me, March 18th, 1840, between the hours of 9 A. M. and 6 P. M. of this day.

ADAM FOGLE.

Daniel Slaymaker sworn, deposeth and saith, I knew old Frederic White well from my infancy; my father joined places with old Frederic; he lived then on what is called the Mill place, and now owned by Jacob Eshleman; I understood he came from Germany, what place I do not know; he came in sometime before or after Braddock's defeat in 1755; he worked at the shoemaking; Charles Burket then owned the Mill property; at this time he lived at my father's; after that he went to Charles Burket, and afterwards bought Burket's property; he married a daughter of this Charles Burket, and had one daughter; but the daughter and wife both died; I never heard Frederick White say he had any relatives in Germany, except one sister, and I am inclined to think she was a full sister; I knew Frederic Derr; he lived on my father's place 17 years; in the year 1775, Frederic Derr proposed going to Germany for some business of his own; I went to mill for some chop stuff for the cattle; Frederic was not at the mill, but was at the house; there was a German schoolmaster there, and old White said he was getting a letter wrote to send to Germany; he brought the letter to my father's to give to Derr to take to Germany, to see if his sister could be found; Frederic Derr got the letter, and did his best by enquiry and publication in Germany to find the sister, but found none; he made a purchase of some books in Germany for Frederic White at his request, and brought them in; I helped to carry the books to old Frederic White, and I heard him tell White he got no information of the sister by enquiry or publication; in 1778, Derr went to Germany, in November; he was gone one year; Frederic White requested him (Derr) if he found the sister, to bring her in the ship with him. In saying that Frederic White came to this country at, or before, or after Braddock's defeat; I only heard that in my father's family; I was then too young to know; it was in my father's time; it was before my time; old Frederic White told Derr to look through all Germany for his sister, as Derr was going to the place where White and his sister had parted, which was two years before Frederic White came away; they had separated two years before Frederic came away. In a year or two after Frederic White came to this country, he wrote out one or two letters to Germany to his sister, but never received an answer, and after Derr's return, he made no further effort; he was satisfied she was dead. I remember the marriage of old Mr. White with Miss Kerns, but do not mind the time; they had one son about a year after; they called him Frederic; he was born on the Mill place; they had only the one child; I remember the death of old Mr. White, and was at his funeral, but I do not mind the time; he died on the Mill place; he was on the borders

of 80 years of age, or better. Young Frederic White was about two years old, when old White died; the widow and the infant remained on the place after old White's death, perhaps a year or more; she then married George Eckert; after she was married she left the Mill place, and went to live with her husband. Young Frederic White's death I recollect; he was about from 4 to 8 years old when he died, as he was 4 years old when they left the Mill place; I knew Adam Draucker; he has worked with me; helped me to plow one season; I knew his family; they said he had gone to Germany; he was gone one year; he never told me of any disagreement between him and George Eckert; Frederic White was older than his sister.

his
DANIEL ⋈ SLAYMAKER.
mark.

Sworn and subscribed by his mark, before me, March 18th, 1840, between 9 o'clock A. M. and 6 P. M.

ADAM FOGLE.

John Lightner, esq., sworn, deposeth and saith, I did not know old Frederic White; I remember of his death, but cannot tell the time; I remember Frederic Derr, but know nothing of his going to Germany; I did not know young Frederic White: nor I do not know the time of his death; I remember the widow White since her marriage with George Eckert; I know the Mill property, that belonged to White's estate; Eckert received all the rents, and attended to all the improvements on it, after his marriage to the widow: I have known several tenants on the Mill property: they all rented from Eckert, and paid him the rent; all the property said to be old Frederic White's, came into Eckert's hands, and he exercised the right of owner, cutting timber and improveing thereon. I knew Adam Draucker; I remember of his going away, and that he was gone to Germany by report of his friends; he since told me of a disagreement with Eckert, which was owing to the marriage of Eckert with the widow; that Eckert had promised him fifty pounds upon his marriage with the widow, and if he had lived up to his contract, he would have had better success with the suit of the German claimants; this was before the determination of the suit with Deimling; Adam Draucker is now dead; he and Deimling were the acting persons against the Eckerts, but Draucker's name did not appear in the suit; this I knew from being an arbitrator in the case myself; I heard both Deimling and George Eckert say that there had been a compromise, and lots cast for the choice of land, and Deimling got the choice, and took the property and was to pay Eckert; he tried to sell, but Eckert would not release until Deimling would indemnify him, which Deimling could not do, or did not do; Eckert would have given up the title, had he been paid according to the compromise; Eckert then got judgment and sold the land in different parcels to Jacob K. Eckert; Jacob K. Eckert is living yet, but George Eckert is dead; the widow Eckert is also living yet, which was the widow White.

JOHN LIGHTNER.

Sworn and subscribed before me, March 18th, 1840, between 9 A. M. and 6 P. M. of the same day.

ADAM FOGLE.

Adam Hoss brought forward again, says, I occupied a part of the Mine tract about 8 years ago; I was never summoned as a defendant in this suit before this time; I have sold my claim to Jacob Frantz, junr., who is the present owner; I have no interest in this suit whatsoever, and do not own any of the land of White's estate, that is, any of the land now in dispute; when I say as a defendant, I mean as a witness; it was about ten years since, I was summoned on a writ of ejectment, but I have since parted with all my interest in the land now claimed by the plaintiffs in the causes.

ADAM HOSS.

Subscribed before me, this 18th day of March, 1840, between 9 A. M. and 6 P. M. of this day.

ADAM FOGLE.

Lancaster county ss:

I do certify that, in pursuance of the foregoing rules and notices given, the foregoing depositions were taken before me at the house of Henry Knizer, in Strasburg township, Lancaster county, Pa., on the 17th and 18th days of March, 1840, respectively, between the hours of 9 o'clock A. M., and 6 o'clock P. M., of each day, Andrew Schindler attending in behalf of the plaintiffs, and propounded questions to the witnesses.

Witness my hand and seal, this 18th day of March, 1840.

ADAM FOGLE, *J. P.*

Circuit court of the U. S., Pennsylvania district, October sessions, 1835.

BENJAMIN BADEN, lessee of Anna Maria Echert, et al.,
vs.
LAWRENCE LANCASTER, with notice to Jacob K. Echert, et al.
} No. 23.

Before Alderman Geo. Bartram, Philadelphia, Monday, 15 June, 1835, four o'clock, P. M.

Elizabeth Schwarzwalder, a witness on the part of the plaintiff, being produced, sworn, and examined, under the above rule, deposes and says:

Adjourned till to-morrow morning at eleven o'clock.

G. BARTRAM, *Ald'n.*

TUESDAY, 16 June, 1835, eleven o'clock, A. M.

Deposition of Elizabeth Schwarzwalder, resumed.

She says as follows: I have heard the Weiss family spoken of. I am from the electorate of Baden, from Laure, in Baden. The Weiss family reside in Martzell, in Baden, which is nearly eleven hours from Laure, or between thirty and thirty-three miles. I was at a watering place

called Bade, and there at a public table where I ate, I heard several gentlemen talking of them. I was at this watering place for a sickness which I had. I cannot say whether those gentlemen were or were not of the family of Weis. A sister's child of a Weiss was once at Laure; a middle aged man. He told me he was related to the Weis family at Laure.

That man was a cousin of Anna Maria Weiss, one of the plaintiffs. The father of Anna Maria Weiss was a cousin of Frederick Weiss, of Lancaster. That Frederick Weiss comes from Martzell, and his father was John Weiss, also of Martzell. I can't say what children that John Weiss had. I can't say how many brothers Frederick Weiss [had,] but I can say how many brothers his father had.

Cross examined.

I know that the man I saw at Bade, was the cousin of Anna Maria Weiss, because he told me so. I was never in Lancaster. I never saw Frederick Weiss. I heard that Frederick Weiss came from Martzell, from Anne Maria Weiss' relations. I never saw the father of Frederick Weiss. I heard who was the father of Frederick Weiss from Anna Maria Weiss' relations, and from those at the public table. I live in New York. I am 45 years old. I came from Laure 2½ years ago. I am no relation of Anna Maria Weiss; nothing but an acquaintance; I have known her near 7 or 8 years.

Being re-examined, she says: the father of Frederick Weiss was John Weiss. The father of Anna Maria Weiss was John George Weiss, and John George Weiss's father was Frederick Weiss. The four brothers of the father of Frederick Weiss were John Weiss, Frederick Weiss, William Weiss, and Matthias Weiss. I have heard this at the table at the watering place aforementioned, and from its being related to me by a cousin of Anna Maria Weiss, who was at Laure, as above mentioned.

Further cross examined. I never saw John George Weiss, nor any of the brothers of the father of Frederick Weiss. I heard that the person who told me of there being 4 brothers, was a cousin of Anna. I saw some of the children or descendants of the four brothers aforementioned, at the house of Anna Maria Weiss, (now Zeller,) but I have no acquaintance with them. The house was at Martzell. I can't say whose house it was. It was four or five years ago. I was travelling for my health, and was taken by my brother to Mantzell. It was not in the house of Anna Maria Weiss, but in a tavern that I met them. When I went to Mantzell, I sent for Anna Maria Weiss to come to see me as an acquaintance, and she came to the house aforesaid. I had become acquainted with her at Badeviler, a watering place. I staid at Martzell only one day; part of a day I dined there.

Being further cross examined: I never saw John George Weiss, nor any of the brothers of the father of Frederick Weiss. I heard that the person who told me was the cousin, by Anna Maria Weiss' relations, at Laure. I know it from [a] relation of Anna Maria Weiss. I know one relation, and of the other I have seen children.

ELIZABETH SCHWARZWALDER.

Sworn and subscribed, June 16, 1835, before me,
G. BARTRAM, *Ald.*

Adjourned to Wednesday, 24 June, 1835, at half [past] ten o'clock, A.M.
G. BARTRAM, *Ald.*

WEDNESDAY, 24th June, 1835,
Half after ten o'clock, A. M.

Christian Schweihard, a witness, produced, sworn, and examined, under the above rule, deposes as follows, on the part of the plaintiff:

I was born in Dinlinyler, near Laure, in the duchy of Baden. I am a citizen of Trebourg. The 13th June, 1835, is one year since I arrived at New York. I live now in Philadelphia county, on the road to Mannyunk. I am fifty-two years of age. I know the surviving members of the family of Weiss, at Martzell, in Baden. I know Anna Maria Weiss, (now Zeller,) one of the plaintiffs here present. I know said family from my having been in business with them when I lived at Tribourg. It was at Reilar's, in Toubleback, that I was connected with them in business. Reiber was a wine merchant. It was three years that we were acquainted together. As I understood them, the father of Anna Maria Weiss, (now Zeller,) was George Weiss, but personally I did not know him. I do not know perfectly whether his name was George Weiss or John George Weiss. The name of the father of George Weiss, or John George Weiss, was Frederick Weiss. Frederick Weiss had three brothers, Gillman Weiss, Matthias Weiss, and Simion Weiss. The father of these four brothers was John Weiss. I do not know whether Simion Weiss had any other name. I cannot tell what children Simon had. The children of Frederick, according to my knowledge, were Barbara and Catharine, but I can't mention them with certainty. I believe he had sons, but I can't say for certain, and they are all dead. When I heard that the man was coming to America, I went to the church and examined the registers. I cannot think of any children that Gillman Weiss had, but Matthias and Barbara, and they are both dead. After I was made acquainted with the family connexion, and knowing what they told me of the business in Lancaster, and had told them I was going to America, but must have my evidence in this case, I went with them to examine the church register at Toylebach.

The children of Matthias Weiss were Barbara Weiss, Matthias Weiss, and Frederick Weiss; but, according to the church register, they are all dead. I do not know what children Simon Weiss had. I can't say for certainty that he had any.

I cannot say any more than I have stated. By dealing in the wine business I have been made acquainted with this matter, and frequently the Lancaster inheritance was spoken of; and then Anna Maria Weiss, (now Zeller,) went with me to Foyleback, to see if there was any truth in the case; and then we found in the church register that she, Anna Maria Weiss, (now Zeller,) is a downright descendant of John George Weiss.

Being asked what relation Anna Maria Weiss (now Zeller) is to Frederick Weiss, of Lancaster county, he says, the father of the deceased Frederick Weiss, of Lancaster county, was a brother of her grandfather. This he found in the church register.

John Zick is a descendant of a female Weiss who married a certain Zick. From as much as we have found, Barbara Zick is a sister of John Zick. I mean found in the register.

Catherine Barbara Brumbacher was, by the female line, one of the Weiss family. I can't say any thing for certain. We only went upon the question who was akin now of the Weiss family.

I don't know who John Jacob Brumbacher was; I can't keep it all in my head. The Brumbackers are descended, by the female side, from the Weisses; so he found by the church register.

Anna Catherina Brumbacher, so far as he found, was a sister of the other Brumbacher.

John Jacob Argast, so far as I can find, was descended from the female branch of the Whites; he is dead; they are all dead; the Argasts; I do not.

Simon Weiss was a brother of John Weiss; the old Weiss; I do not know; I have not heard of any Simon Weiss now living.

I do not know of any Matthew White now living; they lived separated and I cannot tell.

John Jacob Raiber lives at Foylebach; he, Raiber, says he is a cousin of Frederick Weiss, of Lancaster county; he is a wine merchant.

I know nothing of this family but what I heard from Raiber, the wine merchant, and what I learned from the church register; I have been at Martzell many a time; I lived five hours from there; I was only acquainted with Anne Maria Weiss (now Zeller) at Martzell; with none others of the family, except Raiber, and with her at Foylebach, when she came to see her cousin, the wine merchant.

(T. Kittera for defts., objects to such parts of the foregoing examination as are not facts within the knowledge of the witness, having taken exception at the time of exam.)

Being cross-examined, he says—Have been acquainted with Anna Maria Zeller about 3 years; I was acquainted with some of her relations, especially Reiber, with whom I made a great business; have been different times in company with her relations, but don't know them so particularly ; I do not know their names ; I can't tell how nearly they were related (except Reiber); the line was very extensive; I first heard that Mrs. Zeller had the claim about three years ago; I have heard others, besides Mr. Reiber and Mrs. Zeller, speak of the White family; it was known in the whole country of Baden; I cannot tell particularly the name of any I have heard speak of this family, but whenever there was a business in wine, they were always speaking of this matter, this inheritance; know certainly that they had a cousin which left his property in America; I did not hear from them when the cousin had died; I had often heard of the Weiss family before I became acquainted with Reiber, but not so particularly; from where I lived, Togolburg was

nearly 5 hours; Mr. Reiber went with me when I went to examine the church books; pastor Smutz had them; I did not take any copy, but I believe that Mr. Reiber or Mr. Zeller has one; I cannot say what was the name of the daughter of Gillman Weiss, the brother of Frederick Weiss, of Lancaster; I know it to have been found in the church register, that he had a daughter; I do not know for certainty that her husband's name was Banert; I do not know any thing for certain, but she is dead by the church register; I don't know if she left any children; Mrs. Zeller's grandfather was the brother of the father of Frederick Weiss, of Lancaster; I can't say how many children her grandfather had; he certainly had children, because he had John George Weiss; Mrs. Zeller is the only child of John George Weiss; I know this which I found in the church register; I was not employed by any of the family; it has been only for friendship; I cannot answer how long Catharine Barbara Brumbacher has been dead, nor when John Jacob Brumbacher died for certainty; I can't say, but I believe they are dead; I can't say for certain, but I believe Anna Catherina Brumbacher is dead; I don't know any thing of Martha White; I never heard of her; it is possible I read of Catherina Barbara White at the church register; I believe she is dead; I can't say for certainty; I have seen the name of John Ernest in the church register; don't know if he is dead or alive; I went nowhere but to Fogelburg to examine the church books; I got nothing for it; only went with Mr. Reiber as a friend.

Being re-examined for the plaintiff, he says—without reference to Reiber or the church register, from what I heard generally in Baden, Anna Maria Zeller is related to Frederick White, of Lancaster county; it is generally known there; she is daughter of John George White, and he was the son of Frederick, and Frederick was the brother of John; she is the grand niece of the Frederick of Lancaster; her grandfather was his uncle.

The knowledge of what I have answered to Mr. Ingersoll's last exam., is from church books, and what I am certain of; from church books he is certain, and he has seen for certain that she is the living descendant; they had heard many a time the grandfather spoken of, but we went to the church books to be certain; I have heard Mr. Reiber and Mrs. Zeller speak of her grandfather; I have heard nobody else; I have often heard the father spoken of; in Martzell and Fogelback by Reiber and relations; can't say how near they were related.

Simon, before named, was a son of Matthias, not her brother.

CHRISTIAN SCHWEIKARD.

Sworn and subscribed, this 24 June, 1835, before

G. BARTRAM, *alderman.*

In the circuit court of the United States, in and for the district of Pennsylvania, in the third circuit.

LESSEE of Schultheiss & al.,
vs.
ECKERT & al.
} Of October sess., 1834.—No. 15.

1835, November 6th.—The plaintiff's attorney enters a rule to take

the depositions of ancient and infirm witnesses before the honorable Samuel Dale, one of the associate justices of the court of common pleas, of Lancaster county, Pennsylvania, at the house of Adam Fogle, esquire, in Sadsbury township, in said county, on Tuesday, the first day of December, 1835, at two o'clock in the afternoon of said day.

United States, district of Pennsylvania, set:

I certify the foregoing to be a true and faithful copy of the original rule filed, remaining among the records of the circuit court of the United States, in and for the district of Pennsylvania, in the third circuit, in my office.

Witness my hand and the seal of the said court, at Philadelphia, [SEAL.] this sixth day of November, A. D. 1835, and in the sixtieth year of the independence of the said United States.

FRA. HOPKINSON, *Clk. circuit ct.*

Messrs. Jacob Eckert, Jacob Eshelman, Archibald Youngs, and Jacob K. Eckert, defendants.

GENTLEMEN: You will please to take notice, that agreeably to the within rule, the depositions of ancient and infirm witnesses will be taken before me, at the house of Adam Fogle, in Sadsbury township, Lancaster county, Pennsylvania, on Tuesday, the first day of December, 1835, at two o'clock in the afternoon of said day, when and where you may attend and put interrogatories if you think fit.

SAM. DALE.

Served a copy of the within rule and certificate, and of the foregoing notice, upon each of the following defendants, to wit, Jacob Eckert, Jacob Eshleman, Archibald Young, and Jacob K. Eckert, all of Lancaster county, on the 18th day of November, 1835.

ANDREW SCHINDLER.

In the circuit court of the United States, in the district of Pennsylvania, in the third district.

LESSEE of Schultheiss & al., vs. ECKERT & al. } Of October sess., 1834.—No. 15.

State of Pennsylvania, Lancaster county, ss:

In pursuance of the annexed rule of the circuit court of the United States, in the above case, and notice thereon written, before me, Samuel Dale, one of the associate judges of the court of common pleas of said county, personally came Francis M. Knight, of Bart township, of Lancaster county, aged ninety-two years, and very infirm and decrepid, a witness produced and affirmed for the plaintiffs, deposeth as follows, I have known Frederick Weise a long time; I had some knowledge of him before the revolution; I knew or believed he was from the foreign country, particularly from Germany; I knew him to speak to him, before the revolution, as any other neighbor; he lived at a mill now owned

by Mr. Eshleman, Jacob Eshleman; he lived there all the time I knew him, and till he died; I waited on him in his last moments, and was at his burying; we never discoursed on the subject of where he came from, or when he came to the United States; he had a hemp mill when I first knew him, and a still; we never knew that he had any trade that I can give any account of; we never had any conversation about his friends in Germany, nor do I know any thing about them from other sources; he had a wife, and a son by his second wife; by report, the son died after his father; he was called Frederick White among the English people, but the Germans called him Weise.

X-Q. by Mr. Jacob Eshleman. How old was Frederick Weise when first you got acquainted with him?

Ans. He was a man pretty far in years, but I can't say how old—can put no name on it; he was an old man when he died; when we were first acquainted he was married, and I was not married—a young man.

FRANCIS M'KNIGHT.

Affirmed and subscribed, Dec'r 1st, A. D. 1835, before me,

SAM. DALE.

Same time and place, appeared George Fogle, of Bart township, in Lancaster county, aged about sixty-two years, infirm, afflicted with pains, some times unable to ride or walk, being produced and affirmed for plaintiffs, deposeth as follows: I knew Frederick Weise about the year seventeen hundred eighty-four or five; I came to reside in Pennsylvania about that time, and knew him 'til his death; he resided on the old Mill place all the time I was acquainted with him; it is now in possession of Jacob Eshleman, one of the defendants; he is the owner from appearance; the opinion of myself was, that he was a German, or from Germany; his tongue indicated it; he spoke the German language, and had but bad English; I have no knowledge from what part of Germany he came; if I did know, I have now no recollection of it; don't know what time he came to the United States; at the time I was acquainted with him, he had a still, he had a hemp and grist mill sometimes going; he exercised no mechanical labor to my knowledge; if I did know from what place he came, I now don't recollect; I did hear him say, that he had a brother and sister in Germany; he was as often called Frederick White as Frederick Weise; I knew him about the time his first wife died; he married a second wife, and had one son, who died after his father; I think he was about eighty years old when he died, and that is about thirty-seven or thirty-eight years since; his proper name was Frederick Weise.

GEORGE FOGLE.

Affirmed and subscribed, Dec. 1st, A. D. 1835, before me.

SAM. DALE.

Same time and place, appeared Rudolph Phinegar, of Bart township, in Lancaster county, aged seventy years, being produced and affirmed, for plaintiffs, deposeth as follows: I knew and was acquainted with,

Frederick Weise from the time I was eight years old, until the time he died; my father lived close beside him; about ¾ of a mile; he then lived on the old place at the hemp mill; he afterwards built a grist mill; it is now Strasburg township; (Sowaere lives at that place now;) he lived there from the time I first knew him, till he died; he was a German, but I don't know what part he came from; Sowaere is a tenant of Jacob Eshleman; he, Weise, used to tell my father where he came from, but I don't remember where; I have heard him speak of Elsas and Zerwick; but I don't know whether he came from there or not, or whether my father came from there or not; I think he had been there; Weiss had one child, a daughter by his first wife; she was about the same age with myself; she died, when young, with the small pox; Weise was a shoemaker by trade, when he came to this country; I don't know where he resided last, before he came from Germany; he said he had no friends in Germany, that he w[oul]d wish to have in this country, except his sister; he would like to have her in [this country;] the English people called him White, and the Dutch people called him Weise; he had one son by his second wife, he died some time after his father, and while a boy; my father was not from the same place with Weise; my father was from the Swisser country, and Weise was not; not [that] they did not know each other before they came to this country.

X-Q. By Mr. Jacob Eshleman. How do you know he was ash oemaker?

Ans. He told me so himself.

RANDOLPH PHENNEGER.

Affirmed and subscribed, Dec. 1st, A. D. 1835, before me.

SAM. DALE.

Same time and place, personally came James Manaham, of Bart township, Lancaster county, aged fifty-nine years, a witness for plaintiffs, produced and affirmed, deposeth and saith: I have seen a person that they told me was Frederick White; as to any personal acquaintance with him, I saw him and that is all I know about him; where he then lived, belongs to Jacob Eshleman; I was making shoes at Dranger's, and was endeavoring to learn something of the German tongue; Dranger was instructing me, and through a great many words he learnt me to say, "Frederick Weise was in Marzell gebourn;" the way I understand it was, that Frederick was *was* born in Martzell; Drangers was from nearly the same place in Germany, as he told me; and he went to Germany about Frederick Weis's business, as he told me; I think he was one of the executors of Weise's will, as he told me; this is all I know.

JAMES E. MANOHAR.

Affirmed and subscribed, Dec'r 1st, 1835, before me.

SAM. DALE.

Same time and place personally appeared Daniel Slaymaker, of Strasburg township, Lancaster county, aged seventy years, and being

palsied and too infirm to travel, being produced and affirmed, deposeth and saith: I have knew Frederick Weise from my infancy, from I was able to *able to* know any body, it was on his own place he lived, which is now owned by Jacob Eshleman, joining lands with my father's, till his death; he was a German, he said so himself; he said he came from Germany before his death, in the year 1778 or '9; I went to the mill one day for a grist; I went to the house, when I went in there was a German schoolmaster writing there; as Frederick Weise and I was going from the mill to the house, he told me that the schoolmaster was writing a letter for him to send to his sister in Germany; there was a man lived in a house of my father's, who was going to Germany, named Frederick Derr; Weise gave Derr the letter to take to Germany to his sister, and also to bring him some books; I don't remember the place where he was to go, but he was to put a publication in the papers in order to find her; when Derr came home, he brought the books to Weisse, but said that he could get no information of his sister; I don't know that I heard her name; I might have heard the place he came from, but if I did, I forget it; he came to this country, by information, after Braddock's defeat in 1755; he worked at the shoemaking trade; then stilling; and built a mill; he had no desire for any friend in Germany, except his sister; never heard him talk of others; he had not any children to live any time, except the one with his last wife, who died when he was about nine or ten years of age.

DANIEL his ✕ mark SLAYMAKER.

Affirmed and subscribed, Dec'r 1st, 1835, before me,

SAM. DALE.

I, Samuel Dale, one of the associate judges of the court of common pleas, of Lancaster county, Pennsylvania, do certify that the foregoing depositions of Francis McKnight, George Fogle, Randolph Phenegar, James C. Manahan, and Daniel Slaymaker, were taken by me at the house of Adam Fogle, esquire, in Sadsbury township, in said county, on Tuesday, the first day of December, 1835, in the words of the witnesses themselves, and committed to writing by me in the presence of all the defendants, commencing at two o'clock in the afternoon, and on twelve day's notice; and further, that three of the witnesses, to wit, Francis McKnight, George Fogle, and Daniel Slaymaker, from their advanced age and extreme infirmities, are unable to travel to Philadelphia.

Witness my hand, December first, A. D. 1835.

SAM. DALE.

LESSEE of Shultheiss,
vs.
ECKERT and others.

Baldwin, J., charged the jury as follows:

Frederick White or Weiss, sr., was seized in fee simple of the land in controversy—he had an infant son to whom he devised the land by

his will, which took effect by his death in March, 1798; the widow was directed by the will to keep possession of the land till the son should become of the age of fifteen; the widow married again late in the same year, and had a son born in 1799. Frederick White, the younger, died in 1800, aged about six years, leaving his mother and half brother, who are yet alive; the mother resided on the land only about a year, but her husband continued to exercise acts of ownership over it, by cutting timber, leasing it, and receiving the rents thereof, till the son became of age.

The plaintiffs claim the land as heirs to Frederick White, jr., by descent from the half sister of Frederick White, sr. The defendants claim under Jacob K. Eckert, one of the defendants, the son of the widow of Frederick White, sr., by George Eckert, her second husband, and by possession continued from 1800, till this suit was brought in 1834, and thence to the present time.

Both parties claiming under the title of Frederick White, sr., who died seised, in virtue of his father's will—neither need trace the title further back. The plaintiffs are bound to shew in themselves, a legal right of possession, as the heirs of young White; but the defendants can be sustained in their possession, without any right in themselves, other than such as is presumed from possession, by the title of third persons, if there is one better than the plaintiffs', or by a title acquired under the act of limitations, after an actual peaceable possession for twenty-one years.

The first question arising in the cause, is one of fact for your consideration—whether the plaintiffs have proved themselves to be the descendants of the half sister of Frederick White, sr.—on this subject the evidence is competent in law, if it satisfies you in fact. The evidence of their descent from Mrs. Goss, is full and unquestioned; but whether she was the widow of John White, the father of Frederick White, sr., and his mother, as well as the mother of Mrs. Goss, depends on the hearsay and reputation of the place in which the witnesses reside. None of them, or of the persons from whom they derived their information, are members of the White family; but this circumstance alone does not render their testimony incompetent—5 Pet. 85, 86—the law looks to the circumstances of the case; there is no general rule applicable to all—10 Pet. 434.—13 Pet. 220. From the evidence of the defendant, it is certain that Frederick White, sr., emigrated from Germany more than eighty years ago, which is a period beyond what the law presumes the memory of living witnesses to extend. After sixty years from the time of the happening of events, it is competent to prove any fact by public records, and pedigree and relationship by hearsay and reputation. Frederick White died in 1798, at the age of about 80—he was then born in 1718. He often spoke of having had brothers and a sister whom he left in Germany, especially of a sister older than himself, and sometimes of a half sister; but who she was, can only be proved by records, hearsay of persons alive 100 years since, or the common traditionary reputation of the place. On this subject, the rule of law is, that the party who seeks to establish the fact, must do it by the best evidence which the nature of the case admits of, and is in the power of the party to produce; where

it does not appear that any thing has been kept back, or that better evidence exists within the knowledge of the party, then what he brings forward, its weight is left with the jury.—9 Wh., 488, 597.—1 Pet., 596.—12 Pet., 6.

As the records of the place, whence Mr. White emigrated, would be better evidence than any hearsay or reputation, it would operate much against the evidence of the plaintiff, if the existence of such records was proved; as, however, neither party have shaped their interrogatories to that point, the witnesses have not referred to it, and any presumption that such records do or do not exist, would be too uncertain a foundation for your verdict. You will remember that all the witnesses of the plaintiff testify to Mrs. Goss being the half sister of White only from hearsay and reputation; however positive, therefore, their answers to the several interrogatories may be, you will consider them, as speaking as to that fact, only according to the source from which they derive their information concerning it. Should you not be satisfied that Mrs. Goss was the half sister of Frederick White, the plaintiffs have no right to recover. Should you think otherwise, then the next question is one of law—whether the acts of assembly of this State, in force at the death of young White, which regulated the descent of real estate, belonging to persons who died without children, or a will disposing of it, have directed that the land in controversy shall go to the plaintiffs, as the lineal descendants of the half sister of his father. If the plaintiffs have established the fact of such relationship, and the law has provided that the land shall be inherited by such relations of young White, then the plaintiffs are entitled to recover, unless the defendants are protected by the act of limitations, or some rule of law which has the same effect.

Acts which limit the period, during which a party can sustain an action for the recovery of real estate, are founded in the wisest policy, are indispensable to the quiet and repose of titles, property, and long possession; the interest of the State requires them to be carried into effect according to the true intention of the legislature.

But before an act of limitation can come into operation, so as to prevent the recovery of land, of which the person who has the legal title has not had possession within 21 years, there must be an adverse possession by some other person; for the legal owner of the land is presumed to have the legal seisen and possession as the concomitant of his title, until some other person has divested such legal seisen and possession by actual adverse possession of the land itself, with the intention of appropriating it to his own use in opposition to the title of the owner; 11 Pet. 51, which is called in law a disseisin, an ouster, or putting him out of the legal seisen by the effect of his title, which every owner has in land not occupied; 6 Pet. 743. What acts are necessary to constitute a disseisin or adverse possession are too well defined to require any enumeration; it is sufficient to instruct you generally in the application of the law to this case; that the cutting of timber, expending money in repairs or new improvements, and leasing the land to tenants who occupy it, constitute a disseisen, and are the actual possession adverse to the

pltffs., if made with the intention of claiming the land as their own by the persons who do or cause such acts to be done, or the person for whose benefit they operate as evidence of an assertion of right in him. Such possession is an ouster from its commencement, and if continued for 21 consecutive years, bars the right of the original holder, and gives a title by possession, unless the owner comes within some of the exceptions of the law which protect his right, so that the possession, however adverse, or long continued in fact, has no effect in law, so long as the owner remains within the exception, which applies to him. Thus the original act of limitations of 1785, excepted persons beyond seas in foreign countries from its operation, but that case of exception was repealed in 1815; the effect of the first law was indefinite as to time, but the effect of the repeal, as construed by the supreme court of this State, is to continue the exception for 15 years only from the passage of the repealing act of 1815; 12 S. and R. 337. This court is bound to give the same construction to the two laws, and consequently the pltffs. were barred from recovery in 1830, four years before the present action was brought, if they have not shewn something in the case, which saves their title, notwithstanding the lapse of time. This, the pltffs's counsel contend has been done by the directions of the will of old White, that his wife should keep possession of the land till his son was 15 years of age, whereby she and her husband becoming trustees for the son immediately on the death of his father, their or his possession of the land, and all acts done upon it, were as trustees operating for the benefit of those who were entitled to the land as the heirs of the son; that the possession was therefore not adverse to, but under the plaintiff's title, and that the trust, once having attached, Eckert or his wife could not afterwards act otherwise than as trustees.

However true it may be in point of fact, that the widow and her husband did enter upon, and continue the possession of the land as trustees for young White or his heirs, up to any stated period, the legal consequences asserted by the pltffs's counsel, would not result. A trustee of any description may disavow and disclaim his trust, tho' it is in the utmost bad faith, or in violation of his express agreement; from which time his possession of lands, money, or chattels, held under an original trust, becomes adverse, so as to bar an action of account after six years, or an ejectment in 21, after notice of the disavowal, disclaimer, and adverse possession is given to the person entitled to the benefit of the execution of the trust. On this subject the law is so well established by the Supreme Court of the U. S., 7 Wh., 535, 49; 3 Pet., 48, 52; 4 Pet., 500; 5 Pet., 438, 40, 491, 93; 10 Pet., 221, 26; of this State, 4 S. and R., 315, 570; 14 S. and R., 335, 36; and by the highest courts in England, 2 Sch. and Lef., 628, 36, 7; 1 ch. 114, 22; that the reasons on which it is founded may be stated in few words, and can be done in none more appropriate than those of Mr. Justice Gibson in 14 S. & R., 570. While the trust continues to be acknowledged, the possession being friendly, there can exist no reason why the person entitled to the benefits of its execution should call for a change of a pos-

session which is his own; but from the time when the trustee holds for his own use, his possession becomes as adverse as that of a stranger; S. P. 3 Pet. 52. Notice of the disclaimer puts the true owner under the same obligation to reclaim the possession within the fixed period, as if no trust had ever existed; and it matters not whether the trust began by the voluntary act of the trustee, or the law made him a trustee against his will as the effects of his situation and conduct; 10 Pet., 223.

These principles of law are too well settled to be now shaken or questioned; their application to the evidence in the cause will enable us to ascertain the nature and consequences of the possession of this land by the defendants, or those under whom they claim, from 1802 till 1834.

That the possession of George Eckert, from 1798 till the death of Frederick White, jr., in 1800, was not adverse to his title, is very certain, as well in point of fact as law; his administration account recognizes the son as entitled to the real and personal estate devised to him by his father's will; the only doubt which can arise is, whether, after the death of young White, the land was held for the use of Jacob K. Eckert, the half brother, or the heirs in Germany. This depends on the intention of George Eckert, the father, as developed in the evidence during the time he managed the estate, as a question of fact for your decision, so far as depends on the weight of evidence, other than what appears of record or in writings; and a question of law, so far as relates to the conclusion resulting from acknowledged facts or written evidence.

If it was our province to decide, whether, from the whole evidence in the case, George Eckert in fact intended to hold the land for his son, or the German heirs, we should require the plaintiffs to make it very clear, that in 1800, he should have considered the title to be so certainly out of his son, as not to even hold possession for him, until other persons appeared to claim it. Such a conclusion, and so different from the natural presumption of a father's intention, would result only from the law having been previously so well settled as to admit of no reasonable doubt; and that the father acted upon it by the advice of counsel, before he would consent to become the trustee of strangers, even to the country, of a large and valuable estate in his possession. The reference of the defendants' counsel to the escheat law of 1787, by which the estate would have gone to the son for the want of other heirs of young White, with the unsettled state of the laws of descent for more than thirty years afterwards, is a powerful consideration in our minds to denote a contrary intention. You, however, will decide for yourselves, what you think was actually intended on or soon after the death of young White, when George Eckert had made up his mind for whom he would hold the land in trust. But however you may find this fact, we think the law draws a more decisive conclusion from what took place in 1809–'10. By the records of the court of common pleas of Lancaster county, it appears that in 1809, suits were brought in the names of the present plaintiffs against George Eckert, as administrator of Frederick White, sr., to recover their distributive shares of the balance of his personal estate, (as his heirs,) as stated in the administration

account, and to deduct therefrom 550 pounds charged the estate for repairs and improvements on the land.

The suits were brought by Mr. Charles Smith, defended by Mr. Hopkins, and forced to an arbitration by the defendant; one Liemling represented the plaintiffs as their agent, and appeared before the arbitrators, who made an award in 1810 adverse to their claim, finding they had no cause of action.

In 1806, actions of ejectment were brought in the same court by persons of the name of Bawert against George Eckert, and the tenants of the land which had belonged to White, claiming to be entitled to its recovery as his heirs; these causes were also referred to arbitrators by George Eckert. Liemling attended before them as the agent of the plaintiffs, against whom an award was made, and no appeal therefrom. On the same day on which the awards were made, but before they were filed, both setts of actions were discontinued by the written order of Mr. Smith. Since when no suits appear to have been brought by the plaintiffs, or any of them, for their respective shares of the personal fund, but the Bawerts afterwards brought ejectments in this court for the land, under the agency of Liemling, whose interference in the *in the* case appear to have arisen in this way.

It is stated by the witnesses on the part of the defendants, that Adam Draugher, one of the executors of the will of old White, took offence at George Eckert's conduct for some reason, and threatened to go to Germany to find out the heirs of the estate; that he went and staid there about a year, when he returned, saying he could find none, and that Liemling came with him to Lancaster county. If you believe these statements as to Draugher, you will probably think that they not only afford strong ground to believe that Eckert had previously claimed both real and personal estate for his son, but that in consequence of Draugher's going to Germany to find out the heirs, Liemling came as the agent of the Bawerts, and the Shulteiss branches of the White family, for the purpose of asserting their claims, whatever they might be, to land as well as money. The fact that Liemling acted as the agent of the Bawerts to recover the land, and of the Shultheisses to recover the money, is apparent on records, and that he was recognized as such in the conduct of the suits; the plaintiffs have not offered any testimony to disprove his agency, or denied his authority through their counsel; the evidence as to this fact is legally competent to prove it, and were we in your place, we should think it sufficiently made out; you, however, will judge for yourselves.

If the agency of Liemling for the plaintiffs is made out, then notice to him is notice to them, that Eckert held the personalty adversely to them; his assistance to their claim as heirs in the suits, was in law an unequivocal disavowal of any trust in their favor as to the balance of money in his hands, and the same legal result as to the land so far as the Bawerts were concerned, would follow from Liemling's agency for them. And when we consider him as the common agent for both setts of claimants, and looking to Mr. Smith as the legal adviser and attorney of all, con-

nected with his known professional eminence, and to Mr. Hopkins, equally conspicuous at the bar, as counsel of the defendants, there is very strong ground to believe, that Eckert would have assumed the same position of hostility to the claim of the Shultheisses, as the asserted heirs of White in Germany, to the land, as he had shewn by the record he took as to the money claimed by them, had they brought ejectments in place of the Bawerts. It is also a fair inference, that Liemling coming as the authorized agent of the plaintiffs, came with the same authority to assert their claim to the land as to the personalty, if their counsel should be of opinion that the title was in them; and that their confiding their pretensions to the money, while the Bawerts went for the land, was in consequence of the professional advice and opinion of a gentleman, so well qualified to decide, as Mr. Smith was.

In the præcipe for the writs which were sued out in 1809, there is this note, "the old suits being discontinued," when they were brought does not appear, but it appears by the report of the case of Grosser and wife, (who are now plaintiffs,) vs. George Eckert and wife, that it was brought to recover their distributive share of the personal estate, that Eckert claimed the surplus for himself in right of his wife, as an executor of Frederick White, sen., which was directly adverse to the right of any person claiming as heir or next of kin. The plaintiff recovered a verdict and judgment in the circuit court in 1806, but it was set aside by the Supreme Court in an appeal in April 1809. 1 Binney, 575, 83, 88. Then suits were commenced in August, 1809, by Grosser and wife among others, in which the plaintiff entered a rule for a commission to Baden in Germany, to take testimony in this and all the other suits of the plaintiffs, as well as in the ejectment suits of Bawerts. Interrogatories were filed by both parties applying to all the suits; they went fully into the inquiry, as to the connection of the Bawerts and Shultheisses branches with Frederick White, sen., and especially to Mrs. Goss, his asserted half sister; the interrogatories also named and referred to other persons, as said to be the descendants of the White family, embracing the whole connection against whom Eckert was defending any claim to land or money, so far as appears. This joining in the rule for commission and interrogatories in both setts of suits, indicates a common cause by the Bawerts and Shultheisses, each contending for their respective rights, by the same agent, the same counsel, and an evidence taken with reference to the heirship of any of the parties; and on the part of the defendants, the same hostile position to any claim which he assumed in the former suits by the Shultheisses, in 1806, and the Bawerts at the same time and in 1816, in the suits brought in this court. This position of all parties as it appears in the records of Lancaster county, and this court, preclude all inferences of a trust as to the personal property having ever been recognized by George Eckert; and without clear and convincing proof, it cannot well be supposed that, while he perseveringly contested the plaintiffs' claim to the money, he should, by his own consent or admission, be at the same time their trustee for the land. If he was so, no reason appears why they did not take or claim possession by ejectment, if they then

meant to assert their title. It would be a strained presumption also to suppose, that Eckert would so long defend against the claim of the Bawerts, if he had ever admitted that of the Shultheisses; to him it was immaterial which recovered the land, and he would have left them to contend between themselves who were the true heirs of White, instead of defending not only those suits, but seven years afterwards defending the new sett of suits in this court, after the Shultheisses' branch seems to have retired from the prosecution of any right.

In the agreement of compromise of the ejectments in this court in 1818, the parties recite a continued litigation for the land for seventeen years, which was ended by George Eckert on behalf of his son Jacob K. Eckert, agreeing that the Bawerts should have the land on paying two-thirds the value thereof, if it fell to them by the lot to be drawn for the choice, and that Eckert should have it on paying the Bawerts one-third; and that deeds should be executed accordingly to the party who drew the choice; the land was valued at $24,000 in 1818. How, when we consider that George Eckert had contested the title of the Bawert branch for 17 years, and then made this agreement as a compromise, which is a buying one's peace, without giving up a right, and look to the position in which he placed himself, and with the advice of his counsel who signed the agreement, you will not, we presume, be induced to believe that he then considered himself as a trustee for the Shultheiss branch, or that he had voluntarily assumed such relation to them previously. Had the land fallen to Eckert, 8,000 drs. became due to the Bawerts; they drew the choice by Liemling their agent, and thus became indebted to Eckert 16,000, while he was bound to execute a deed to the Bawerts on receiving the money; this agreement was entered of record, Liemling signed the agreement to draw lots, too, after the valuation, and on the paper containing it, and the counsel of both parties approved, by their signatures, every thing which had been done; George Eckert thereby became irrevocably bound by these agreements; and if he was, at the same time, bound as a trustee to surrender the land to the present plaintiffs, in virtue of a trust fastened upon, by his own consent, or by operation of law, his situation was one of great hardship at least; while the plaintiffs stood aloof for 17 years before, and 16 years afterwards, without giving notice of, or asserting their claim to the land, or calling on George or Jacob K. Eckert to execute the trust.

These circumstances will be recalled to your recollection again; at present they are referred to in connection with the other evidence, in order to point you to all the sources of inquiry, which will enable you to form a satisfactory opinion on the fact, whether the possession of the Eckerts, and those who have occupied the land under them, was for the use or benefit of the plaintiffs or defendants.

Taking all the testimony in the cause in connection, we think you will be justified in finding, that the possession of the defendants from the death of young White, was adverse as fully to the right of the plaintiffs, as it was to Bawerts, and that George Eckert held it for his son.

Should this be your opinion, the statute of limitations began to run upon their right in 1809, and had its full effect in 1830, by a continued adverse possession of 21 years. If you should entertain doubts upon this subject, and yet be satisfied that Liemling was authorized by the plaintiffs to claim the land, the effect of his coming here for that purpose, would be the same as if they had so come in person; the consequence of which would be, that if there was no trust, the act of limitation would thence begin to run, because from that time they were out of the exception, and when begun, the limitation goes on without being interrupted by any intervening event. And if the plaintiff neither obtained possession, or brought a suit to recover the land, the evidence of an existing trust at any time after 1809, ought to be convincing and clear, any doubts ought to operate in your minds in favor of the defendants, as the burthen of shewing title is exclusively on the plaintiffs. When the only escape from the effects of the law depends on a doubtful fact, on which the right of their recovery depends, the safer course for a jury, is to suffer the law to take its course, rather than give a certain right on uncertain evidence. Whatever may be our opinions on the facts of the case, we will not assume the direction of yours; if we differ, and you find the fact of an existing continuing by George Eckert, and those who have succeeded him in the possession of the land, then it will become necessary to consider the objections to the plaintiffs' right of recovery on account of the lapse of time, independent of the act of limitation. In the lessee of Haines vs. Chambers, at the last term, we thus instructed a jury.

Before we apply these principles to this case, we will call your attention to the ejectments brought by the Bawerts in this court, in 1816, which terminated in a compromise, 1818, signed by the counsel of the plaintiffs and defendants, and filed of record, by which the land was to be valued, one third to be paid to the plaintiffs, and two thirds to the defendant, Jacob K. Eckert, for whom defence was taken in the causes; that the parties should, by lot, ascertain who should take the land, and pay the other their share. The choice fell upon the plaintiffs, but they did not pay; whereupon, Jacob K. Eckert proceeded, by foreign attachment, in 1823, and by due process of law, to sell the interest of the Bawerts in the real estate, purchased it himself in 1824, and, in 1830, sold the land in controversy to Eshelman, one of the defendants, for 2,800 drs., who has since expended a large sum in permanent and valuable improvements. Connecting these with the other circumstances in evidence, we are of opinion, that the silence and inaction of the plaintiffs, from the time the first suits were brought, which, from the agreement of 1818, connected with the præcipe for the suits in 1809, may be carried back to 1801, and from 1810, when the suits for the recovery of the money were discontinued, till 1834, when this suit was brought to recover the land, affords ground for the presumption, that they had abandoned their claim to the land, either by the intrinsic force of their legal title, (though not barred by an adverse possession of 21 years,) or their right to the benefits resulting from the asserted trust, subject to which

the land continued to be held in the mean time. We do not mean to say, that the law draws this presumption, but that you may presume the abandonment as a matter of fact, in a case of this description; and few cases can occur, in which such presumption would meet the reasons on which the law permits a jury to draw it, especially as to the tract claimed in this suit. Eshelmon purchased in 1830, before the plaintiffs claimed the land; he has had a possession adverse in fact to theirs; no other evidence of notice of their claim appear than is implied from the deed from Eckert to him; but this would not prevent him from asserting this presumption, if his case otherwise laid a fair foundation for it. His position as a purchaser for valuable consideration, even with notice, would not put him in a worse situation than Jacob K. Eckert, from whom he purchased, but might be considered as preferable, when ——— decide on all the circumstances of the case, which justify your drawing the presumption of abandonment.

On this subject there is an important consideration, arising from the state of the plaintiff's title; however perfect it may have been in its origin, it is barred by the act of limitations, if, counting back from 1834, there had been an adverse possession by the defendants for 21 years. The possession proved is adverse, if the law has impressed no trust upon it for the benefit of the plaintiff; there is no evidence of an express or acknowledged trust by George or Jacob K. Eckert; and if a trust ever existed, it must be made out exclusively as a legal result from their position and acts, imposing upon them the character and consequences of their being trustees. In such a case a jury may well presume an abandonment of a claim, depending solely on the existence of a trust, under circumstances which might not be sufficient for the presumption, if it was the only obstacle to the plaintiff's recovery.

In this case, the demand of the plaintiffs is the possession of the land, first made thirty-three years after the death of Frederick White, sr.; in such a case, we might well repeat the language of the Supreme Court of the U. S., in Barclay vs. Howell: "If it were necessary, an unmolested possession for thirty years, would authorize the presumption of a grant. Indeed, under peculiar circumstances, a grant has been presumed from a possession, less than the number of years required to bar the action of ejectment, under the act of limitations." 6 Pet. 513. In Strother vs. Lucas, the court says: "When the party has slept upon his rights so great a length of time, there is every reason to conclude she had abandoned it." 6 Pet. 772. So in Ewing vs. Burnet: "On the evidence in the cause, the jury might have presumed a release, a conveyance, or an abandonment, of the claim or right of W., under a deed, in virtue of which he had made no assertion of right from 1798, in favor of such a possession as defendant held from 1804, though it may not have been strictly such an adverse possession as would have been a bar under the act of limitations. There may be circumstances which would justify such presumption in less than 21 years." 6 Pet. 513. "And we think that the evidence in this case, was in law sufficient to authorize the jury to have made the presumption, to protest a possession of the na-

ture testified for thirty years." 11 Pet. 52. And the same principle as to abandonment was re-affirmed in Strother vs. Lucas. 12 Pet. 456.

In the application of these principles of law, you will decide whether you will or will not presume an abandonment; if it were left to us to decide, we should have no difficulty in doing it.

United States, eastern district of Pennsylvania:

I certify the foregoing to be a true and faithful copy of the record and proceedings in the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, in a certain action of trespass and ejectment, therein lately depending between Benjamin Baden, lessee of Zeller and al., plaintiff, and Jacob K. Eckert and al., defendants.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court at Philadelphia, this eighth day of [SEAL.] January, 1844, and in the sixty-eighth year of the independence of the said United States.

FRA. HOPKINSON, *Clerk Circ't Ct.*

Filed, 1844.